

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-7779

CASEY RAFAEL TYLER,

Petitioner - Appellant,

v.

ERIK A. HOOKS,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, Chief District Judge. (5:19-hc-02183-BO)

Submitted: April 14, 2020

Decided: April 17, 2020

Before WILKINSON, QUATTLEBAUM, and RUSHING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Casey Rafael Tyler, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

APPENDIX A

PER CURIAM:

Casey Rafael Tyler seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2018) petition as an unauthorized, successive § 2254 petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A) (2018). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When, as here, the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Tyler has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:19-HC-2183-BO

CASEY RAFAEL TYLER,

)

Petitioner,

)

v.

)

ERIK HOOKS,

)

Respondent.

)

ORDER

On June 24, 2019, petitioner, a state inmate, petitioned this court for a writ of habeas corpus *pro se* pursuant to 28 U.S.C. § 2254. The matter now is before the court for an initial review pursuant to Rule 4 of the Rules Governing § 2254 cases in the United States District Courts.

Petitioner previously filed a § 2254 habeas petition challenging the same state judgment of conviction he seeks to have set aside in the instant petition. See Tyler v. Cooper, No. 5:13-HC-2150-F (E.D.N.C. July 28, 2014).¹ The Antiterrorism and Effective Death Penalty Act bars a claim presented in a second or successive habeas corpus application under § 2254 that was not presented in a prior application unless:

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral

¹The dismissal of petitioner's first § 2254 petition as time-barred constitutes a decision on the merits for purposes of determining whether a subsequent petition is a second or successive petition. See Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 228 (1995) ("The rules of finality, both statutory and judge made, treat a dismissal on statute-of-limitations grounds the same way they treat a dismissal for failure to state a claim, for failure to prove substantive liability, or for failure to prosecute: as a judgment on the merits."); Murray v. Greiner, 394 F.3d 78, 81 (2d Cir. 2005); see also, Jeter v. White, No. 4:06-424-HMH-TER, 2006 WL 1391500, *2 (D.S.C. May 19, 2006), dismissed by, 203 F. App'x 533 (4th Cir. 2006).

review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2).

Before a second or successive application for habeas relief may be filed in the district court, an applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3)(A). In this case, petitioner has not received authorization to file this second or successive action, including any claims asserting actual innocence, from the Fourth Circuit. See id.; Gonzalez v. Crosby, 545 U.S. 524, 530 (2005) (“[B]efore the district court may accept a successive petition for filing, the court of appeals must determine that it presents a claim not previously raised that is sufficient to meet § 2244(b)(2)’s new-rule or actual-innocence provisions.”); Richardson v. Thomas, 930 F.3d 587, 595 (4th Cir. 2019) (“[J]urisdiction to consider the question of whether the prisoner has made a *prima facie* showing that he satisfies the requirements of § 2244(b)(2) rests exclusively with the federal courts of appeal.”). Thus, this court does not have jurisdiction to review the matters set forth in the current petition until authorized to do so by the United States Court of Appeals for the Fourth Circuit.

In summary, petitioner’s habeas action is DISMISSED without prejudice to allow him to seek authorization to file this petition. The court DENIES a certificate of appealability. See 28 U.S.C.

§ 2253(c); Buck v. Davis, 137 S. Ct. 759, 773 (2017); Miller-El v. Cockrell, 537 U.S. 322, 335-38 (2003); Slack v. McDaniel, 529 U.S. 473, 478, 483-85 (2000). The clerk of court is DIRECTED to close this case.

SO ORDERED, this the 17 day of November, 2019.


TERRENCE W. BOYLE
Chief United States District Judge

FILED: May 26, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7779
(5:19-hc-02183-BO)

CASEY RAFAEL TYLER

Petitioner - Appellant

v.

ERIK A. HOOKS

Respondent - Appellee

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Quattlebaum, and Judge Rushing.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX C

**Additional material
from this filing is
available in the
Clerk's Office.**