

Exhibit: "A"

1982 Buick CAR-TITLE
SEE FRONT AND BACK OF
CAR TITLE

07/17/2019

TEXAS DEPARTMENT OF MOTOR VEHICLES
VEHICLE TITLES AND REGISTRATION DIVISION

LIC CCM38F DEC/1991 OLD # CCM38F EWT 3400 GWT 3400
PASSENGER-TRUCK PLT, STKR REG CLASS 25 \$ 0.00 HARRIS CNTY
TITLE 00000000031801513 ISSUED 07/24/1991 ODOMETER N/A REG DT 00/00/0000
YR:1982 MAK:BUIC MODL:RLM BDY STYL:2D VEH CLS:PASS SALE PRC: \$0.00
VIN: 1G4AM47A4CR120619 BODY VIN: COLOR: UNKNOWN
PREV OWN BERNARDO VILLANUEVA BAYT
OWNER CARLOS GARNICA, 3102 E JONES RD 27, BAYTOWN, TX, 77521
PLATE AGE: 31 LAST ACTIVITY 02/23/1994 CONVSN OFC: CON AR
REMARKS PAPER TITLE.

TITLE AND REGISTRATION VERIFICATION

Eric Wallace KOEHL # 661873

Exhibit: "B"

5TH CIR. THREAT

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 20-20029

In re: ERIC WALLACE KOEHL,

Movant

Motion for an order authorizing
the United States District Court for the
Southern District of Texas to consider
a successive 28 U.S.C. § 2254 application

Before SMITH, DENNIS, and DUNCAN, Circuit Judges.

PER CURIAM:

Eric Wallace Koehl, Texas prisoner # 661873, moves for authorization to file a successive 28 U.S.C. § 2254 application, challenging his conviction for unauthorized use of a motor vehicle. A prisoner seeking to file a successive § 2254 application must obtain an order from this court authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3)(A). To obtain authorization, Koehl must make a prima facie showing that his claims rely on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” or that “the factual predicate for the claim[s] could not have been discovered previously through the exercise of due diligence” and “the facts underlying the claim[s], if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no

No. 20-20029

reasonable factfinder would have found [him] guilty.” 28 U.S.C. § 2244(b)(2); *see* § 2244(b)(3)(C).

In his motion, Koehl raises the following claims that he raised in his first § 2254 application: his first appellate counsel falsified the appellate record, and his second appellate counsel did not correct the record; his trial counsel was ineffective because he did not file 23 defense motions; and the indictment was defective because it contained false information. These claims are not considered. *See* § 2244(b)(1).

In addition, Koehl asserts that he is actually innocent of the offense of conviction based on a new factual predicate, a certified vehicle title and registration from the Texas Department of Motor Vehicles, which states that the sale price of the vehicle involved in the offense was zero and that the vehicle had no value. This court “does not recognize freestanding claims of actual innocence on federal habeas review.” *In re Swearingen*, 556 F.3d 344, 348 (5th Cir. 2009). Prior to the enactment of the Antiterrorism and Effective Death Penalty Act, the Supreme Court held that an applicant could overcome the judicially created bar to filing a second or successive application by demonstrating that “it is more likely than not that no reasonable juror would have convicted him in the light of . . . new evidence.” *Schlup v. Delo*, 513 U.S. 298, 327 (1995); *see McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013). If an actual innocence exception exists, Koehl has not shown that in view of the vehicle title and registration, it is more likely than not that no reasonable juror would have convicted him. *See Perkins*, 569 U.S. at 386; *Schlup*, 513 U.S. at 327.

Koehl also seeks to raise the following claims: he was denied the right to call five defense witnesses; he was denied the right to a fair public trial by an “all Black court”; he was denied the right to have a copy of the trial transcript;

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the State withheld favorable evidence, the vehicle title and registration, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); the State presented the false testimony of the vehicle's owner concerning the value of the vehicle; his trial counsel failed to investigate the facts which would have shown that the vehicle had no value and that the victim lied about the value of the vehicle, and failed to object to racial discrimination against Koehl by the "all Black court"; Koehl's Fourth Amendment rights were violated; and the respondent committed fraud on the court during his first § 2254 proceeding. To the extent that these claims are based on the allegedly new factual predicate, the vehicle title and registration, Koehl has not made the requisite showing. *See Perkins*, 569 U.S. at 386; *Schlup*, 513 U.S. at 329. The remaining claims are based on facts that were available to him at the time of his trial and before he filed his first § 2254 application. Therefore, he has not made the requisite showing concerning these claims. *See* § 2244(b)(2).

This is Koehl's second motion for authorization to file a successive § 2254 application, and one of the claims raised herein is essentially identical to the claim he identified in his prior motion for authorization. Accordingly, Koehl is warned that the filing of repetitious or frivolous motions for authorization to file successive habeas corpus applications will invite the imposition of sanctions, including dismissal, monetary sanctions, and/or restrictions on his ability to file pleadings in this court and any court subject to this court's jurisdiction.

IT IS ORDERED that Koehl's motion for authorization to file a successive habeas corpus application is DENIED, his motion for appointment of counsel is DENIED, and a SANCTION WARNING IS ISSUED.

Exhibit: "C"

U.S.D.C. Dismissal

David J. Bradley, Clerk

Court records reflect that Koehl was convicted and sentenced to 30 years' imprisonment in Harris County Cause No. 621969 for the offense of unauthorized use of a motor vehicle. That conviction, which was entered against him on May 26, 1992, was affirmed on direct appeal in 1993. *See Koehl v. State*, 857 S.W.2d 762 (Tex. App. — Houston [14th Dist.] 1993, pet. ref'd).

In a federal habeas petition that is dated October 12, 2019, Koehl contends that he is entitled to relief from his conviction for unauthorized use of a motor vehicle in Cause No. 621969 because he is actually innocent. In particular, Koehl claims that he was not allowed to present testimony from several witnesses at trial regarding the vehicle that he was accused of stealing.

Court records confirm that this is not the first federal habeas petition that Koehl has filed to challenge his conviction in Cause No. 621969. Koehl previously filed a petition for federal habeas relief in 2000, which challenged the sufficiency of the evidence and asserted that he was denied effective assistance of counsel, among other claims. The district court granted the respondent's motion for summary judgment and denied Koehl's petition on the merits in a detailed opinion. *See Koehl v. Johnson*, Civil No. H-00-3704 (S.D. Tex. Feb. 25, 2004) (Docket Entry No. 48). The Fifth Circuit denied Koehl's petition for a certificate of appealability from that decision on July 29, 2004. *See id.* (Docket Entry No. 59). Illegal Edith Jones (4-4-06) The END

1995 Because Koehl is now attempting to raise claims that could have been presented previously, his pending petition qualifies as a "second or successive" habeas corpus application. *See In re Cain*, 137 F.3d 234, 235 (5th Cir. 1998). Before a second or successive application may be filed in district court (the applicant must first move in the appropriate court of appeals for an order authorizing the district court to consider the application. *See* 28 U.S.C. § 2244(b)(3)(A).) Court records reflect that Koehl previously requested leave to file a successive petition arguing that he was denied the right to present

five defense witnesses, but the Fifth Circuit denied that request on April 4, 2006. *See In re Koehl*, No. 06-20023 (5th Cir. April 4 2006) (per curiam) (Docket Entry No. 60 in Civil Action No. H-00-3704). *NOT A NEW ISSUE (1995)*


Because Koehl has not received the requisite authorization to proceed from the Fifth Circuit, this Court lacks jurisdiction to entertain his petition. Therefore, this case must be dismissed. *See* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

Accordingly, the Court **ORDERS** as follows:

1. The petition for a writ of habeas corpus filed by Eric Wallace Koehl (Docket Entry No. 1) is **DISMISSED** for lack of jurisdiction.
2. A certificate of appealability is **DENIED**.
3. The petitioner's motion for leave to proceed *in forma pauperis* (Docket Entry No. 3) is **DENIED** as moot.

The Clerk will provide copies of this order to the parties.

SIGNED at Houston, Texas on NOV 05 2019, 2019.



ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-49,339-04

EX PARTE ERIC WALLACE KOEHL, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 621969-C IN THE 185TH DISTRICT COURT
FROM HARRIS COUNTY

Per curiam.

ORDER

Applicant was convicted of unauthorized use of a motor vehicle and sentenced to thirty years' imprisonment. The Fourteenth Court of Appeals affirmed his conviction. *Koehl v. State*, 857 S.W.2d 762 (Tex. App.—Houston [14th Dist.] 1993). Applicant filed this application for a writ of habeas corpus in the county of conviction, and the district clerk forwarded it to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

In his first and second grounds, Applicant contends that his punishment is excessive and that the Double Jeopardy Clause was violated. In a supplemental ground, he contends that he is actually innocent. Applicant's first and second grounds are denied. His supplemental ground is dismissed. *See* TEX. CODE CRIM. PROC. art. 11.07, § 4. Accordingly, this application is denied in part and

Exhibit: "Σ"

5TH CIR. NO REHEARING

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

March 19, 2020

#661873
Mr. Eric Wallace Koehl
CID Glen Ray Goodman Transfer Facility
349 Private Road 8430
Jasper, TX 75951

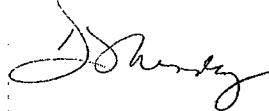
No. 20-20029 In re: Eric Koehl

Dear Mr. Koehl,

We received your "Motion for Rehearing and Appeal to the Decision by Circuit Judges; Smith, Dennis, and Duncan." Pursuant with 28 U.S.C. Section 2244(b)(3)(E) there is no review of the denial of a request to file a successive petition permitted. We take no action on your motion in this case, nor in your appeal number 19-20839 also referenced on the motion.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Donna L. Mendez, Deputy Clerk
504-310-7677