

United States Court of Appeals for the Fifth Circuit

No. 19-10924

BENJAMON RAY STEWART,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CV-509
USDC No. 4:19-CV-152

ORDER:

Benjamin Ray Stewart, Texas prisoner # 01970445, moves for a certificate of appealability (COA) to appeal the denial of his consolidated 28 U.S.C. § 2254 applications challenging his convictions for three counts of intoxication manslaughter with a vehicle and one count of failure to stop and render aid in an accident involving serious bodily injury or death. He contends that the district court erred by rejecting his claims that a state witness committed perjury, that he received ineffective assistance from his trial and appellate counsel, that he was denied due process in various ways,

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Appendix A

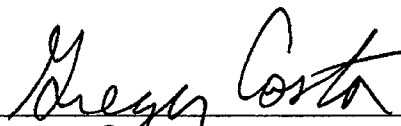
and that he is actually innocent.⁹ Stewart also challenges the district court's decision not to hold an evidentiary hearing.

As an initial matter, this court lacks jurisdiction to consider those claims that are raised for the first time in Stewart's COA motion. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018), *cert. denied*, 140 S. Ct. 859 (2020).

A COA may be issued only if the applicant "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by showing that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues raised deserve encouragement to proceed further. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Where, as here, the district court denied relief on the merits, a petitioner must establish that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Because Stewart has not made the requisite showing to obtain a COA on his constitutional claims, a COA is DENIED.

Finally, Stewart's remaining motions for emergency notice based on newly discovered evidence, for an expedited ruling, for appointment of counsel, and for this court to order an evidentiary hearing are DENIED.




GREGG COSTA
United States Circuit Judge

A True Copy
Certified order issued Sep 08, 2020


Clerk, U.S. Court of Appeals, Fifth Circuit

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Appendix A

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BENJAMON RAY STEWART,
Petitioner,

V.

LORIE DAVIS, DIRECTOR,
Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent.

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Civil Action No. 4:18-CV-509-O

BENJAMON RAY STEWART,
Petitioner,

V.

LORIE DAVIS, DIRECTOR,
Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent.

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Civil Action No. 4:19-CV-152-O

ORDER

Petitioner has two pending federal habeas-corpus petitions in this Court challenging one or more of the same state court convictions. The Hon. United States District Judge John McBryde has transferred No. 4:19-CV-152-A to the undersigned for possible consolidation with No. 4:18-CV-509-O. Order, ECF No. 8. Review of the petitions reveals that the federal petitions challenge convictions Petitioner received in the same court on the same date. Under these circumstances, consolidation is appropriate. Therefore, No. 4:19-CV-152-O is consolidated with No. 4:18-CV-509-O. The number of the consolidated action shall be shown in the clerk's records and on all future filings to be "Civil Action No. 4:18-CV-509-O (Consolidated with No. 4:19-CV-152-O)."

SO ORDERED on this 12th day of March, 2019.


Reed O'Connor

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BENJAMON RAY STEWART,
Petitioner,

V.

LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent.

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Civil Action No. 4:18-CV-509-O
(Consolidated with No. 4:19-CV-152-O)

ORDER

The United States Court of Appeals for the Fifth Circuit has forwarded petitioner Benjamin Ray Stewart's request for a certificate of appealability from the Court's July 22, 2019, Opinion and Order and Final Judgment denying his habeas-corpus petition under 28 U.S.C. § 2254 to be filed as a notice of appeal. This Court denied a certificate of appealability in the July 22 Opinion and Order. However, to the extent necessary, the instant request is DENIED for the same reasons discussed therein.

SO ORDERED on this 26th day of August, 2019.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

Eric church, the people's Eagle let me Fan

my view" → is Horrible. Be Be.

United States Court of Appeals
^{THIS IS THE PEOPLE}
for the Fifth Circuit

- The people spoke -

No. 19-10924

BENJAMON RAY STEWART,

versus

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CV-509

Before JONES, COSTA, and WILSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that appellant's motion for leave to file out of
time the motion for reconsideration is GRANTED.

A member of this panel previously DENIED the motion for a
certificate of appealability. The panel has considered appellant's motion for
reconsideration.

→ IT IS FURTHER ORDERED that the motion is DENIED.

It Doesnt make sense, to me,
that my Body can persist in a Living state
with this much pain inside of me

→ The people spoke, they Donot love me, Be Be.
-APPENDIX C-

The people
Spoke.
They Donot
Love me.
But America - Beats
in my Broken Apart Heart
as does Jesus - & I forgive
everybody & I love
for everything

Petitioner—Appellant,

that means it
you

Be Be.

→ The SCOTUS, Doesnt
care about the Facts
of my case. - The people
can not speak through
them to say they
love me,
I wont accept it
as true,

this was
the last
chance!

This can't be
Taken Back
to me in Hell
Be Be.

Be Can't Take this away -

Decision to Deny Justice
out of
the
TX. (Texas) Court of
Criminal Appeals

UNAVAILABLE !

I'm stuck in prison cell -
most of my legal work
was stolen.

I can not get copies

Help?! please see
motion for leave

to overcome procedural bar?!

opinion and order
U.S. District Court
Northern District
Fortworth Division

UNAVAILABLE!

From PRISON, I present my copy in
to the 5th Circuit Court
as Exhibit 1

See motion for leave
to overcome procedural Bar?!