APPENDIX "A"

United States Court of Appeals

Fifth Circuit

ORDER OF FINAL JUDGMENT

Dated September 08, 2020

(2 pages)

United States Court of Appeals
for the Fifth Circuit

No. 19-40696

A True Copy
Certified order issued Sep 08, 2020

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

NOEL CHRISTOPHER TURNER,

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 Eastern District of Texas
USDC No. 4:17-CV-326
USDC No. 4:17-CV-327
USDC No. 4:17-CV-328

ORDER:

Noel Christopher Turner, Texas prisoner # 1861086, pleaded guilty to conspiracy to commit arson, sexual assault of a child, and credit card or debit card abuse. He was sentenced to concurrent terms of imprisonment of 28 years for the conspiracy offense, five years for the sexual assault of a child, and one year for credit card or debit card abuse. Turner subsequently filed a 28 U.S.C. § 2254 petition in each case. The district court consolidated the cases and dismissed the petitions as time barred. Turner now seeks a

certificate of appealability (COA) to appeal that dismissal. He argues that he should be able to raise his § 2254 claims because he was actually innocent of the crimes and is entitled to equitable tolling.

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). When the district court's denial of federal habeas relief is based on procedural grounds, "a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Turner has not made the requisite showing. *See id.* Accordingly, Turner's motion for a COA is DENIED.

JAMES C. HO
United States Circuit Judge

APPENDIX "B"

United States Court of Appeals

Fifth Circuit

MOTION FOR RECONSIDERATION

DENIED

Dated October 07, 2020

(3 pages)

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

October 07, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 19-40696 Noel Turner v. Bobby Lumpkin, Director
USDC No. 4:17-CV-326
USDC No. 4:17-CV-327
USDC No. 4:17-CV-328

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Jann M. Wynne, Deputy Clerk
504-310-7688

Mr. Nathan Tadema
Mr. Noel Turner

United States Court of Appeals for the Fifth Circuit

No. 19-40696

NOEL CHRISTOPHER TURNER,

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 Eastern District of Texas
USDC No. 4:17-CV-326

Before WILLETT, HO, and DUNCAN, *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 certificate of appealability. The panel has considered Appellant's motion for reconsideration.

IT IS FURTHER ORDERED that the motion for reconsideration is DENIED.

APPENDIX "C"

United States District Court

Eastern District of Texas

Sherman Division

ORDER OF DISMISSAL

and

FINAL JUDGMENT

Dated July 08, 2019

(4 pages)

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

NOEL CHRISTOPHER TURNER, #1861086	§	
	§	
VS.	§	CIVIL ACTION NO. 4:17cv326
	§	CONSOLIDATED WITH CIVIL ACTION
DIRECTOR, TDCJ-CID	§	NOS. 4:17cv327 AND 4:17cv328

ORDER OF DISMISSAL

Petitioner Noel Christopher Turner, an inmate confined in the Texas prison system, filed the above-styled and numbered petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petitions were referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the petitions should be dismissed as time-barred. Petitioner has filed objections.

Petitioner is challenging three Grayson County convictions. On May 23, 2013, after pleas of guilty and pursuant to a plea agreement, he was sentenced to 28 years of imprisonment for conspiracy to commit arson, 5 years of imprisonment for sexual assault of a child, and 1 year of imprisonment for credit card or debit card abuse, with the sentences running concurrently. He did not make any attempt to challenge the convictions in state court until September 2016. The present petitions were not filed until May 2, 2017.

Under 28 U.S.C. § 2244(d)(1)(A), Petitioner had one year from the date his convictions became final to file the present petitions, absent tolling provisions. His convictions became final on June 24, 2013. The present petitions were due no later than June 24, 2014, in the absence of tolling provisions. The petitions were not filed until almost three years later on May 2, 2017. As was previously noted, he did not file anything in state court until September 2016. By then, the present petitions were already time-barred by more than two years. The pendency of the state applications did not effectively toll the deadline of June 24, 2014.

In both his petitions and objections, Petitioner argues that he is entitled to equitable tolling. The Supreme Court has held that the AEDPA's statute of limitations may be tolled for equitable

reasons. *Holland v. Florida*, 560 U.S. 631, 645 (2010). A petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way and prevented timely filing. *Id.* at 649. Petitioner has shown neither. He attached copies of several letters he wrote concerning his convictions, but he did not show that he pursued his rights diligently or that extraordinary circumstances stood in his way and prevented timely filing.

Petitioner also argues in both his petition and objections that he is entitled to relief based on actual innocence. The Supreme Court has held that "actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar . . . or . . . the expiration of the statute of limitations." *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013). *See also Tamayo v. Stephens*, 740 F.3d 986, 990 (5th Cir. 2013). "To be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence - whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence - that was not presented at trial. Because such evidence is obviously unavailable in the vast majority of cases, claims of actual innocence are rarely successful." *Schlup v. Delo*, 513 U.S. 298, 324 (1995). "[A] petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." *Id.* at 329. Petitioner's objections focus on legal arguments, as opposed to factual innocence, but "[a]ctual innocence means 'factual innocence and not mere legal insufficiency.'" *United States v. Jones*, 172 F.3d 381, 384 (5th Cir. 1999). He has not shown actual innocence. Furthermore, as the Magistrate Judge explained, courts have been unwilling to allow prisoners to invoke *McQuiggin* after pleading guilty. Petitioner knowingly and voluntarily pled guilty, and he has not made a viable showing of actual innocence; thus, the actual innocence gateway for consideration of his claims is not available.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are

without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petitions for a writ of habeas corpus are **DENIED** and the cases are **DISMISSED** with prejudice as time-barred. A certificate of appealability is **DENIED**. All motions not previously ruled on are **DENIED**.

SIGNED this 8th day of July, 2019.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

NOEL CHRISTOPHER TURNER, #1861086	§	
	§	
VS.	§	CIVIL ACTION NO. 4:17cv326
	§	CONSOLIDATED WITH CIVIL ACTION
DIRECTOR, TDCJ-CID	§	NOS. 4:17cv327 AND 4:17cv328

FINAL JUDGMENT

The Court having considered Petitioner's cases and rendered its decision by opinion issued this same date, it is hereby **ORDERED** that the petitions for a writ of habeas corpus are **DISMISSED** with prejudice.

SIGNED this 8th day of July, 2019.

Amos Mazzant

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

APPENDIX "D"

United States District Court

Eastern District of Texas

Sherman Division

REPORT AND RECOMMENDATION

OF UNITED STATES MAGISTRATE JUDGE

Dated May 23, 2019

(8 pages)

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

NOEL CHRISTOPHER TURNER, #1861086	§	
VS.	§	CIVIL ACTION NO. 4:17cv326 CONSOLIDATED WITH CIVIL ACTION
DIRECTOR, TDCJ-CID	§	NOS. 4:17cv327 AND 4:17cv328

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner Noel Christopher Turner, an inmate confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petitions were referred for findings of fact, conclusions of law and recommendations for the disposition of the cases.

Procedural Background

Petitioner is challenging three Grayson County convictions. On May 23, 2013, after pleas of guilty and pursuant to a plea agreement, he was sentenced to 28 years of imprisonment for conspiracy to commit arson, 5 years of imprisonment for sexual assault of a child, and 1 year of imprisonment for credit card or debit card abuse, with the sentences running concurrently. He did not appeal the convictions.

Over three years later, Petitioner filed one application for a writ of habeas corpus in state court on September 15, 2016, and two other applications on September 20, 2016. On February 8, 2017, the Texas Court of Criminal Appeals dismissed the application regarding the credit card or debit card abuse conviction since it had been discharged. On the same day, the remaining two applications were denied without written order on findings of the trial court without a hearing.

The present petitions (Dkt. #1) were filed in this Court on May 12, 2017. Petitioner states that he placed the petitions in the prison mailing system on May 2, 2017. The petitions are deemed filed

on May 2, 2017, in accordance with the federal "mailbox rule." *Spotville v. Cain*, 149 F.3d 374, 377 (5th Cir. 1998). Petitioner argues that he is entitled to relief for the following reasons:

1. He was denied counsel during a preliminary hearing;
2. Search warrants were unconstitutional;
3. Guilty plea was involuntary and he is factually innocent;
4. Ineffective assistance of counsel;
5. He was denied counsel during a motion hearing;
6. Prosecution failed to disclose evidence;
7. The range of punishment exceeded the statutory maximum; and
8. His sentence for his conspiracy to commit arson conviction was unconstitutionally enhanced.

The Director filed a response (Dkt. #17) on January 23, 2019. Petitioner filed a response (Dkt. #25) on March 4, 2019.

Statute of Limitations

On April 24, 1996, the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") was signed into law. The law made several changes to the federal habeas corpus statutes, including the addition of a one year statute of limitations. 28 U.S.C. § 2244(d)(1). AEPDA provides that the one year limitations period shall run from the latest of four possible situations. Section 2244(d)(1)(A) specifies that the limitations period shall run from the date a judgment becomes final by the conclusion of direct review or the expiration of the time for seeking such review. Section 2244(d)(1)(B) specifies that the limitations period shall run from the date an impediment to filing created by the State is removed. Section 2244(d)(1)(C) specifies that the limitations period shall run from the date in which a constitutional right has been initially recognized by the Supreme Court and made retroactively applicable to cases on collateral review. Section 2244(d)(1)(D) states that the limitations period shall run from "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." Section 2244(d)(2) also provides that the time during which a properly filed application for State post-conviction or other collateral review with

respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation.

In the present case, the appropriate section to employ is Section 2244(d)(1)(A). Petitioner was sentenced on May 23, 2013. He did not file a notice of appeal; thus, the convictions became final thirty days later. *Egerton v. Cockrell*, 334 F.3d 433, 435 (5th Cir. 2003); *Scott v. Johnson*, 227 F.3d 260, 262 (5th Cir. 2000). The convictions became final on Monday, June 24, 2013. The present petitions were due no later than June 24, 2014, in the absence of tolling provisions. They were not filed until almost three years later on May 2, 2017.

The statutory tolling provisions specify that "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation." 28 U.S.C. § 2244(d)(2). Petitioner did not file an application for a writ of habeas corpus in state court until September 15, 2016. By then, the present petitions were already time-barred by more than two years. The pendency of the state applications did not effectively toll the statute of limitations. The present petitions were filed too late.

The Supreme Court has held that the AEDPA's statute of limitations may be tolled for equitable reasons. *Holland v. Florida*, 560 U.S. 631, 645 (2010). A petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way and prevented timely filing. *Id.* at 649. Petitioner has shown neither. He mentions delays associated with an inadequate law library system, but this does not constitute extraordinary circumstances. Moreover, even if the delays associated with an inadequate law library could be viewed as extraordinary circumstances, he has not shown that he pursued his rights diligently. In his response, Petitioner mentions he wrote letters to obtain documents, but he still failed to show diligence. He is not entitled to equitable tolling.

Actual Innocence

The Supreme Court has held that "actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar . . . or . . . the expiration of

the statute of limitations." *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013). *See also Tamayo v. Stephens*, 740 F.3d 986, 990 (5th Cir. 2013). "To be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence - whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence - that was not presented at trial. Because such evidence is obviously unavailable in the vast majority of cases, claims of actual innocence are rarely successful." *Schlup v. Delo*, 513 U.S. 298, 324 (1995). "[A] petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." *Id.* at 329. "Actual innocence means 'factual innocence and not mere legal insufficiency.'" *United States v. Jones*, 172 F.3d 381, 384 (5th Cir. 1999). A mere assertion of "stale factual innocence" is unpersuasive. *Drew v. Scott*, 28 F.3d 460, 462 (5th Cir. 1994).

The Director persuasively argues that Petitioner fails to present new, reliable evidence which would sway a reasonable juror to change his or her verdict from guilty in any of his convictions. Petitioner initially alleges in his memorandum that he is actually innocent in light of illegal search warrants used to obtain evidence. His claim does not involve factual innocence. Petitioner also asserts that the credit card was issued in his name; thus, he did not defraud himself. In response, the Director appropriately observes that Petitioner knew this at the time he pled guilty. In the sexual assault case, Petitioner argues that he had an alibi during the sexual assault, arguing that his attorney failed to produce evidence of a bank statement showing that he was purchasing a bed around the time of the assault and witnesses who would testify as to his whereabouts on that night. In support of the claim, Petitioner has offered nothing other than conclusory allegations and bald assertions, which are insufficient to support a petition for a writ of habeas corpus. *See Miller v. Johnson*, 200 F.3d 274, 282 (5th Cir. 2000); *Koch v. Puckett*, 907 F.2d 524, 530 (5th Cir. 1990); *Ross v. Estelle*, 694 F.2d 1008, 1011 (5th Cir. 1983). The Director persuasively argues that Petitioner's claims about his conspiracy to commit arson conviction are likewise conclusory. Petitioner has not submitted "new, reliable evidence" that was not available at the time he pled guilty.

In addition to the foregoing, the Director observes that Petitioner's evidence of innocence is insufficient to demonstrate that it is more likely than not that no reasonable juror would have convicted him in light of the newly presented evidence, especially in light of his guilty plea. *Schlup*, 513 U.S. at 327. The Director added that she fails to see and Petitioner fails to show how the name on the credit card is dispositive of his credit card/debit card abuse conviction. And, as Petitioner's counsel points out, the victim in the sexual assault case "was never certain of the exact day and time of the sexual assault" so any evidence regarding an alibi is unnecessary to undermine the victim's testimony about when the assault occurred. SHCR-01 at 177–78 (attorney affidavit). Moreover, Petitioner pled guilty and confessed to committing the crimes at issue and offers little to show his pleas were involuntary. The evidence he cites in support of his "innocence" simply is not the type of evidence contemplated in *Schlup*. *See Schlup*, 513 U.S. at 324 ("To be credible, [an actual innocence] claim requires petitioner to support his allegations of constitutional error with new reliable evidence - whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence - that was not presented at trial."). The Director persuasively argues that since Petitioner offers insufficient evidence to prove actual innocence, he cannot meet the exception recognized in *McQuiggin*.

The Court observes that Petitioner repeatedly asserts that he is seeking relief based on actual innocence of a type discussed in *Herrera v. Collins*, 506 U.S. 390 (1993). In that case, however, the Supreme Court held that a claim of actual innocence does not state an independent, substantive constitutional claim and does not provide a basis for federal habeas relief. *Id.* at 400. The traditional remedy for a claim of actual innocence based on new evidence is executive clemency. *Id.* at 417. As such, the Fifth Circuit has repeatedly held that claims of actual innocence are not cognizable on federal habeas review. *Dowthitt v. Johnson*, 230 F.3d 733, 741 (5th Cir. 2000), *cert. denied*, 532 U.S. 915 (2001); *Graham v. Johnson*, 168 F.3d 762, 788 (5th Cir. 1999); *Lucas v. Johnson*, 132 F.3d 1069, 1075 (5th Cir. 1998). Petitioner does not have a basis for habeas corpus relief to the extent that he is merely arguing that he is actually innocent of the charges. Actual innocence, if proved, serves as a gateway through which a petitioner may pass to prove his constitutional claims, but Petitioner has not shown a viable claim of actual innocence.

As a final matter, the Court once again observes that Petitioner pled guilty. He admitted that he committed the offenses. The state trial court found that his guilty pleas were entered knowingly and voluntarily. SHCR-01 at 230-31; SHCR-02 at 189; SHCR-03 at 187. The Ninth Circuit has observed that while pleading guilty does not foreclose the possibility of a finding of actual innocence, a petitioner's claim is seriously undermined by his entry of a guilty plea. *Chestang v. Sisto*, 522 F. App'x 389, 390 (9th Cir. 2013). Many courts have been unwilling to allow prisoners to invoke *McQuiggin* after pleading guilty. *See Teal v. Quintana*, No. 5:14-230-JMH, 2014 WL 4435968, at *5 (E.D. Ky. Sept. 9, 2014) (Petitioner's guilty plea dispels any notion that he is eligible to assert a viable claim of actual innocence under the *McQuiggin* rationale); *Sidener v. United States*, No. 3:11-CV-03085, 2013 WL 4041375, at *3 (C.D. Ill. Aug. 8, 2013) (Rejecting *McQuiggin* claim because "Petitioner's admission to the factual basis demonstrates that Petitioner cannot make a showing of actual innocence. Therefore, the actual innocence 'gateway' for allowing consideration of otherwise time-barred claims is not available in Petitioner's case."); *United States v. Cunningham*, No. H-12-3147, 2013 WL 3899335, at *4 n.3 (S.D. Tex. July 27, 2013) (Because Petitioner pled guilty and has made no showing of actual innocence, *McQuiggin* in not available); *Barton v. Quarterman*, No. H-07-1192, 2007 WL 3228107, at *15 (S.D. Tex. Oct. 30, 2007) (Petitioner's "voluntary guilty plea weighs heavily against his belated claim of actual innocence"); *Pannell v. Cockrell*, No. 3:01-CV-1931L, 2002 WL 1155860, at *4 (N.D. Tex. May 29, 2002) ("This voluntary guilty plea negates any claim of actual innocence."). Petitioner knowingly and voluntarily pled guilty, and he has not made a viable showing of actual innocence; thus, the actual innocence gateway for consideration of his claims is not available.

In conclusion, the petitions for a writ of habeas corpus are time-barred. Petitioner cites actual innocence in an effort to overcome the statute of limitations, but he has not satisfied the Supreme Court's requirements in *McQuiggin* and *Schlup* in order to show actual innocence.

Certificate of Appealability

"A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal." *Buck v. Davis*, 480 U.S. ___, 137 S. Ct. 759, 773 (2017). Instead, under 28 U.S.C. § 2253(c)(1), he must first obtain a certificate of appealability ("COA") from

a circuit justice or judge. *Id.* Although Petitioner has not yet filed a notice of appeal, the court may address whether he would be entitled to a certificate of appealability. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000) (A district court may *sua sponte* rule on a certificate of appealability because "the district court that denies a petitioner relief is in the best position to determine whether the petitioner has made a substantial showing of a denial of a constitutional right on the issues before the court. Further briefing and argument on the very issues the court has just ruled on would be repetitious.").

A certificate of appealability may issue only if a petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner need only show that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Supreme Court recently emphasized that the COA inquiry "is not coextensive with merits analysis" and "should be decided without 'full consideration of the factual or legal bases adduced in support of the claims.'" *Buck*, 137 S. Ct. at 773 (quoting *Miller-El*, 537 U.S. at 336). Moreover, "[w]hen the district court denied relief on procedural grounds, the petitioner seeking a COA must further show that 'jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" *Rhoades v. Davis*, 852 F.3d 422, 427 (5th Cir. 2017) (quoting *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012)).

In this case, it is respectfully recommended that reasonable jurists could not debate the denial of the Petitioner's § 2254 petition on procedural grounds, nor find that the issues presented are adequate to deserve encouragement to proceed. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack*, 529 U.S. at 484). Accordingly, it is recommended that the Court find that the Petitioner is not entitled to a certificate of appealability as to his claims.

Recommendation

It is accordingly recommended that the above-styled and numbered petitions for a writ of habeas corpus be denied and that the cases be dismissed with prejudice as time-barred. A certificate of appealability should be denied.

Within fourteen (14) days after service of the magistrate judge's report, any party must serve and file specific written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific.

Failure to file specific, written objections will bar the party from appealing the unobjected-to factual findings and legal conclusions of the magistrate judge that are accepted by the district court, except upon grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superceded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

SIGNED this 23rd day of May, 2019.

Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE

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