

NO. \_\_\_\_\_

IN THE  
SUPREME COURT  
OF THE UNITED STATES

\*\*\*\*\*

DANIEL LEE REED  
Petitioner,

v.

BOBBY LUMPKIN-DIRECTOR T.D.C.J.  
Respondent.

\*\*\*\*\*

ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

\*\*\*\*\*

APPENDIX



Daniel Lee Reed-Pro-se  
Petitioner  
#02040919  
2101 FM 369 N.  
Iowa Park, TX 76367

PLATED UNALLRED UNIT

## **APPENDIX-A**

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

November 17, 2021

No. 21-40341

Lyle W. Cayce  
Clerk

DANIEL LEE REED,

*Petitioner—Appellant,*

*versus*

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,  
Correctional Institutions Division,*

*Respondent—Appellee.*

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Application for Certificate of Appealability from the  
United States District Court for the Eastern District of Texas  
USDC No. 6:19-CV-432

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ORDER:

Daniel Lee Reed, Texas prisoner # 2040919, was convicted by a jury of aggravated sexual assault of a child and sentenced to life imprisonment. He seeks a certificate of appealability (COA) to contest the dismissal of his 28 U.S.C. § 2254 application as time barred.

Reed contends that he is entitled to equitable tolling because his state habeas counsel actively and intentionally misled him concerning the federal limitations period and whether a timely § 2254 application could be filed. He maintains that the facts of this case support that his counsel did not merely miscalculate the deadline to file a § 2254 application but instead purposefully

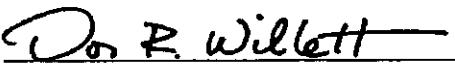
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No. 21-40341

provided incorrect advice as to the availability of federal habeas relief. Reed has abandoned his argument that the untimeliness of his § 2254 application should be excused because he is actually innocent. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

To obtain a COA, Reed must make a substantial showing of the denial of a constitutional right. *See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). He may satisfy that showing by demonstrating that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks and citation omitted). Where, as here, the district court denies relief based on procedural grounds, a COA should issue if the applicant 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.” *Id.*

Reed has not made the required showing. Thus, his motion for a COA is DENIED.

  
DON R. WILLETT  
United States Circuit Judge

*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

November 17, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-40341      Reed v. Lumpkin  
                    USDC No. 6:19-CV-432

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

*Christina Rachal*

By: Christina C. Rachal, Deputy Clerk  
504-310-7651

Ms. Jessica Michelle Manojlovich  
Mr. Edward Larry Marshall  
Mr. David O'Toole  
Mr. Daniel Lee Reed

**APPENDIX-B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

DANIEL LEE REED, #2040919,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

§ Case No. 6:19-cv-432-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner Daniel Lee Reed, a Texas Department of Criminal Justice inmate proceeding pro se, filed this federal petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for disposition.

On March 5, 2021, Judge Love issued a Report and Recommendation recommending that the Court deny the petition and dismiss the case with prejudice as time barred. Judge Love also recommended that a certificate of appealability be denied. Docket No. 20. Petitioner objected. Docket No. 22.

Where a party objects within fourteen days of service of the Report and Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), superseded on other grounds by statute, 28 U.S.C. § 636(b)(1) (extending the

time to file objections from ten to fourteen days).

Petitioner's objections merely repeat his original contention that he should be afforded equitable tolling because his habeas attorney intentionally deceived him about his federal filing deadlines. Docket No. 22. Petitioner offers no evidence of this alleged deception, only conclusory statements. *Id.*

Having conducted a de novo review of the Report and the record in this case, the Court has determined that the Report of the United States Magistrate Judge is correct, and Petitioner's objections are without merit. The Court therefore **OVERRULES** Petitioner's objections (Docket No. 22) and **ADOPTS** the Report and Recommendation of the Magistrate Judge (Docket No. 20) as the opinion of the District Court. Petitioner's petition for habeas corpus is hereby **DISMISSED WITH PREJUDICE** as time barred. Further, the Court **DENIES** a certificate of appealability.

So **ORDERED** and **SIGNED** this 24th day of March, 2021.

  
\_\_\_\_\_  
JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

DANIEL LEE REED, #2040919,

§

Petitioner,

§

v.

Case No. 6:19-cv-432-JDK-JDL

DIRECTOR, TDCJ-CID,

§

Respondent.

§

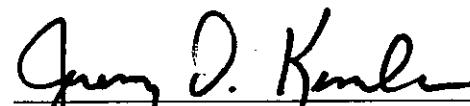
**FINAL JUDGMENT**

The Court, having considered Petitioner's case and rendered its decision by opinion issued this same date, hereby enters **FINAL JUDGMENT**.

It is ORDERED that this petition for a writ of habeas corpus is **DISMISSED WITH PREJUDICE**. A certificate of appealability is **DENIED**. All pending motions are **DENIED** as **MOOT**.

The Clerk of Court is instructed to close this case.

So ORDERED and SIGNED this 24th day of March, 2021.

  
\_\_\_\_\_  
JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE

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mail rec'd 4-7-21

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