APPENDIX
LOWER COURT'S
RULING

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 13, 2021
Lyle W. Cayce
Clerk

No. 20-40151
Summary Calendar
CONSOLIDATED WITH
No. 20-40631

QUINCY DESHAN BUTLER,

Petitioner—Appellant,

versus

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

Respondent—Appellee.

Applications for Certificate of Appealability from the
United States District Court for the Eastern District of Texas
USDC No. 9:16-CV-210

Before ELROD, OLDHAM, and WILSON, *Circuit Judges*.

PER CURIAM:*

Quincy Deshan Butler, Texas prisoner # 01899541, moves for a certificate of appealability (COA) to appeal the district court's denial of his

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

28 U.S.C. § 2254 application in which he attacked his conviction for two counts of aggravated assault with a deadly weapon. The district court determined that the claims raised in the application were without merit in part and were procedurally defaulted in part.

Butler asserts that (1) he received ineffective assistance of counsel at the pretrial, trial, and appellate levels; (2) he was denied a fair trial due to improper remarks; (3) that his conviction violated his right to be protected against double jeopardy and principles of collateral estoppel, (4) the trial court limited cross-examination in violation of his right to effective counsel; and (5) the trial court erred by denying him an evidentiary hearing. Butler also moves for leave to proceed IFP on appeal, for the appointment of counsel, for leave to file amended COA brief, for leave to proceed on original COA brief, and for leave to file a supplement to his COA brief.

To the extent that Butler has failed to reallege claims that he asserted in his § 2254 application or has failed to support those claims in his COA motion, he has abandoned them. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999). In addition, to the extent that he seeks to assert new claims in his COA motion, we will not review those claims. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018).

To obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where a district court has denied claims on the merits, a petitioner must 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). Where the district court's dismissal is on procedural grounds, he must show "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).

Butler has not made the necessary showing. Thus, his motion for a COA is DENIED. As he fails to make the required showing for a COA, we do not reach whether the district court erred by denying an evidentiary hearing. *See United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020), *petition for cert. filed* (U.S. Mar. 18, 2021) (No. 20-7553).

Butler's motion to proceed on his original COA brief and his motion to file a supplement to the COA brief are GRANTED. However, we note that the grounds raised in the supplement to the COA brief are either raised for the first time on appeal or cumulative of the grounds already asserted in Butler's original COA brief. His motions for leave to proceed in forma pauperis, for the appointment of counsel, and for leave to amend his COA motion are DENIED.

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 19, 2021

Lyle W. Cayce
Clerk

No. 20-40151
CONSOLIDATED WITH
No. 20-40631

QUINCY DESHAN BUTLER,

[illegible]

versus

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

[illegible]

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:16-CV-210

ON PETITION FOR REHEARING EN BANC

Before ELROD, OLDHAM, and WILSON, Circuit Judges.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R.

APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.