

United States Court of Appeals
for the Fifth Circuit

No. 20-50651

United States Court of Appeals
Fifth Circuit

FILED

August 11, 2021

FRANK HENDERSON BROWN,

Lyle W. Cayce
Clerk

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 Western District of Texas
USDC No. 1:18-CV-1054

ORDER:

IT IS ORDERED that appellant's motion for clarification of the Court's order denying a certificate of appealability is GRANTED. The court's previous order is withdrawn, and it is substituted with the following.

Frank Henderson Brown is currently serving a sentence for a Texas conviction for possession of a firearm as a felon. He seeks a certificate of appealability to challenge the district court's denial of his application for writ of habeas corpus under 28 U.S.C. § 2254.

Brown asserted twenty-six claims for relief before the district court — twenty of which he now seeks to appeal. His claims can be summarized broadly as claims of trial court error, prosecutor error, ineffective assistance of trial counsel, and ineffective assistance of appellate counsel. The district court rejected each claim and declined to issue a certificate of appealability.

We may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This means that for each of the twenty claims on which he wants to appeal, Brown must “demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003). For the one claim of the twenty raised on appeal that was dismissed as procedurally defaulted — Brown’s claim that the district court erred by allowing the prosecutor to argue facts not in evidence during closing argument — Brown must also show “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). Brown has not shown that jurists of reason could debate the district court’s assessment of his constitutional claims or the district court’s dismissal of one of his claims as procedurally barred.

IT IS ORDERED that Appellant’s motion for a certificate of appealability is DENIED.

/s/ Jennifer Walker Elrod
JENNIFER WALKER ELROD
United States Circuit Judge