

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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February 22, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-40433 Cooper v. Lumpkin  
USDC No. 4:21-CV-114

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Shawn D. Henderson, Deputy Clerk  
504-310-7668

Mr. Brandon L. Cooper  
Mr. Edward Larry Marshall

United States Court of Appeals  
for the Fifth Circuit

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No. 21-40433

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A True Copy  
Certified order issued Feb 22, 2022

*Jeff W. Cuyler*  
Clerk, U.S. Court of Appeals, Fifth Circuit

BRANDON L. COOPER,

*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. 4:21-CV-114

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ORDER:

Brandon L. Cooper, Texas prisoner # 1797873, seeks a certificate of appealability (COA) to appeal the denial of a 28 U.S.C. § 2254 application challenging his conviction for robbery. He asserts that he is actually innocent because of constitutional errors at his trial and on appeal and because the evidence was insufficient to prove his guilt. He also asserts that his Fourth Amendment rights were violated and that he was denied effective assistance of counsel. Because Cooper fails to show “that jurists of reason would find it debatable whether the district court was correct in its procedural ruling” that the application was time barred, a COA is DENIED. *Slack v. McDaniel*, 529

No. 21-40433

U.S. 473, 484 (2000). To the extent Cooper asserts that the actual innocence standard for overcoming the untimeliness of his § 2254 claims is satisfied by new evidence from surveillance cameras, we lack jurisdiction to consider arguments raised for the first time in a COA motion filed here. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018); *Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003).

A handwritten signature in black ink, reading "Don R. Willett", with a horizontal line underneath.

DON R. WILLETT

*United States Circuit Judge*