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Cause No._____

In The
Supreme Court of the United States

Lonnie Kade Welsh,

Petitioner

versus

Gary Maddox Sheriff Of Lamb County; Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division,

Respondents

PETITION FOR A WRIT OF CERTIORARI

Appendix A:
Memorandum Opinion of the United States Court of Appeals for the 5th Circuit
May 25, 2022

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 9, 2022
Lyle W. Cayce
Clerk

No. 21-50709

LONNIE KADE WELSH,

Petitioner—Appellant,

versus

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

Respondent—Appellee.

CONSOLIDATED WITH

Nos. 21-50711, 21-50712

LONNIE KADE WELSH,

Petitioner—Appellant,

versus

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

Respondents—Appellees.

Applications for Certificates of Appealability from the
United States District Court for the Western District of Texas
USDC No. 5:21-CV-562
USDC No. 5:21-CV-547
USDC No. 5:21-CV-548

ORDER:

In 2015, Lonnie Kade Welsh, former Texas prisoner # 6516607, was adjudged a sexually violent predator, as defined by Texas Health & Safety Code § 841.003, and he was civilly committed to the custody of the Texas Civil Commitment Office at the Texas Civil Commitment Center for inpatient treatment. He seeks certificates of appealability (COA) to appeal the district court's dismissals of three constructive 28 U.S.C. § 2254 habeas applications and the subsequent denials of his motions for reconsideration under Federal Rule of Civil Procedure 59(e). Because the applications set forth identical arguments, the court CONSOLIDATES them sua sponte.

The § 2254 applications challenged three prior felony convictions for sexually violent offenses. They argued that the state and federal sex offender registration requirements that attended the convictions constituted custody and that he was being held in custody pursuant to the convictions because they were predicate convictions that were used to obtain the civil commitment order. The district court determined that Welsh was not being held in custody pursuant to those convictions and dismissed the § 2254 applications for lack of jurisdiction, and it denied the motions for reconsideration because they improperly sought to raise legal arguments that were or could have been raised prior to entry of judgment.

Welsh argues that the district court should have construed his petitions as arising under 28 U.S.C. § 2241 as well as § 2254, the sex offender registration requirements constitute ongoing custody under each habeas provision, he is in custody pursuant to the civil commitment order, he is in

custody as a pretrial detainee, and he should be allowed to seek habeas relief under the Suspension Clause of Article 1, Section 9 of the United States Constitution because he was actually innocent of the predicate offenses.

Where, as here, the district court denies a § 2254 application on procedural grounds without reaching the underlying constitutional claims, a COA should issue "when the prisoner shows, at least, that jurists of reason would find it debatable whether the [application] 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). To obtain a COA to appeal the dismissals of his Rule 59(e) motions, Welsh must show that reasonable jurists could debate whether the district court's denial of relief was an abuse of discretion. *See Hernandez v. Thaler*, 630 F.3d 420, 428 (5th Cir. 2011).

Welsh has not made the requisite showing. *See Slack*, 529 us at 484; *Hernandez*, 630 F.3d at 428. Accordingly, IT IS ORDERED that his applications for a COA are DENIED. His motions for leave to proceed in forma pauperis also are DENIED.

/s/ James E. Graves, Jr.

JAMES E. GRAVES, JR.
United States Circuit Judge

Cause No._____

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Appendix B:
Denial For Rehearing En Banc for the 5th Circuit June 7, 2022

United States Court of Appeals for the Fifth Circuit

No. 21-50709

LONNIE KADE WELSH,

Petitioner—Appellant,

versus

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

Respondent—Appellee,

CONSOLIDATED WITH

NOS. 21-50711, 21-50712

Lonnie Kade Welsh,

Petitioner—Appellant,

versus

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

Respondents—Appellees.

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United States District Court
for the Western District of Texas
USDC No. 5:21-CV-562
USDC No. 5:21-CV-547
USDC No. 5:21-CV-548

ON PETITION FOR REHEARING EN BANC

Before SOUTHWICK, GRAVES, and COSTA, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R. 35 I.O.P.), the motion for reconsideration 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.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LONNIE KADE WELSH,	§	
	§	
Petitioner,	§	
	§	
v.	§	**Civil No. SA-21-CA-0562-OLG**
	§	
BOBBY LUMPKIN, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

ORDER

Before the Court is *pro se* Petitioner Lonnie Kade Welsh's second Motion to Alter or Amend Judgment (ECF No. 12). Citing Rule 59(e) of the Federal Rules of Civil Procedure, Petitioner seeks reconsideration of this Court's June 15, 2021, Order dismissing his 28 U.S.C. § 2254 petition for habeas corpus relief, arguing the Court came to several legal conclusions that were contrary to fact and law. However, the Court dismissed Petitioner's § 2254 petition without prejudice because it lacks jurisdiction to consider Petitioner's allegations challenging his October 2013 conviction for of sexual assault of a child. (ECF No. 8). For the same reason, the Court now lacks jurisdiction over his motion to alter or amend judgment.

Furthermore, the purpose of a Rule 59(e) motion is "to correct manifest errors of law or to present newly discovered evidence." *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989). As such, to prevail on a Rule 59(e) motion, a petitioner must demonstrate the existence of: (1) an intervening change of controlling law; (2) the availability of new evidence; or (3) the need to correct a clear error or to prevent manifest injustice. *Waltman*, 875 F.2d at 473; *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986). Petitioner does not make this showing. Instead, Petitioner's motion relies almost exclusively on arguments that have already been presented to, and considered by, this Court. But when evaluating motions to reconsider

pursuant to Rule 59(e), courts must be aware that such motions are *not* designed to permit a party to continue to re-litigate the same claims with the same arguments, or even new arguments, once there has been a ruling on the merits of a claim. *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 (2008) (Rule 59(e) "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." (citation omitted)). Because this Court has already thoroughly considered and rejected Petitioner's arguments, his motion to alter or amend will be dismissed.

It is therefore **ORDERED** that Petitioner's second Motion to Alter or Amend Judgment filed July 6, 2021 (ECF No. 12) is **DISMISSED**.

It is further **ORDERED** that a certificate of appealability is **DENIED** for the instant motion, as reasonable jurists could not debate the denial of Petitioner's motion on substantive or 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).

SIGNED this the 15th day of July, 2021.

ORLANDO L. GARCIA
Chief United States District Judge

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Appendix C:
28 U.S.C. § 2241 Power to grant writ (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.
(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.
(c) The writ of habeas corpus shall not extend to a prisoner unless—
(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

(e) (1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

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Appendix D:
28 U.S.C. § 2254

State custody; remedies in Federal courts (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B) (i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e) (1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a

determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substance Acts [21 USCS § 848], in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254 [28 USCS § 2254].

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Appendix E:
Texas Health and Safety Code 841.003(a)

Sexually Violent Predator.(a) A person is a sexually violent predator for the purposes of this chapter if the person:

(1) is a repeat sexually violent offender; and

(2) suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence.

(b) A person is a repeat sexually violent offender for the purposes of this chapter if the person is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses or if:

(1) the person:

(A) is convicted of a sexually violent offense, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision;

(B) enters a plea of guilty or nolo contendere for a sexually violent offense in return for a grant of deferred adjudication; or

(C) is adjudicated by a juvenile court as having engaged in delinquent conduct constituting a sexually violent offense and is committed to the Texas Juvenile Justice Department under Section 54.04(d)(3) or (m), Family Code; and

(2) after the date on which under Subdivision (1) the person is convicted, receives a grant of deferred adjudication, or is adjudicated by a juvenile court as having engaged in delinquent conduct, the person commits a sexually violent offense for which the person is convicted, but only if the sentence for the offense is imposed.

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Appendix F:
United States Constitutional Article I, § 9, cl. 2

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Cause No._____

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Appendix G:
United States Constitutional Fourteenth Amendment § 1 Procedural Due Process Clause

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.