

Appendix A

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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August 11, 2022

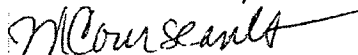
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-10007 Thompson v. Lumpkin
USDC No. 4:19-CV-669

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Melissa B. Courseault, Deputy Clerk
504-310-7701

Mr. Lawrence Edward Thompson

United States Court of Appeals
for the Fifth Circuit

No. 22-10007

United States Court of Appeals
Fifth Circuit

FILED

August 11, 2022

LAWRENCE EDWARD THOMPSON,

Lyle W. Cayce
Clerk

Petitioner—Appellant,

versus

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

Respondent—Appellee.

Application for Certificate of Appealability from the
United States District Court for the Northern District of Texas
USDC No. 4:19-CV-669

ORDER:

Lawrence Edward Thompson, Texas prisoner # 408167, filed a 28 U.S.C. § 2254 application in August 2019, which attacked his July 1974 conviction of sodomy and the associated five-year sentence of imprisonment. More than two years after entry of the judgment dismissing that application, Thompson filed a Federal Rule of Civil Procedure 60(b)(6) motion seeking relief from the judgment. Thompson now moves for a certificate of appealability (COA) to appeal the district court's denial of his Rule 60(b)(6) motion and the denial of his motion for reconsideration.

No. 22-10007

Citing several reasons for delay in filing the motion, Thompson asserts that the district court erred in determining that his Rule 60(b)(6) motion had not been filed within a reasonable time and in requiring more specificity and supporting evidence. He also contends that actual innocence overcomes a failure to satisfy the “in custody” requirement of § 2254(a), and he asserts that he has evidence to show that he was convicted of a crime he did not commit. Finally, Thompson argues that a claim of actual innocence like that raised in *Schlup v. Delo*, 513 U.S. 298 (1995), is cognizable in a first habeas corpus application.

A prisoner is entitled to a COA if he makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Thompson must show that reasonable jurists could debate the correctness of the disposition of the Rule 60(b) motion. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Hernandez v. Thaler*, 630 F.3d 420, 428 (5th Cir. 2011).

Thompson has not made the required showing. Accordingly, his motion for a COA is DENIED. His motion to proceed in forma pauperis on appeal is also DENIED.

A handwritten signature in black ink, appearing to read 'SK Duncan', with a long horizontal line extending to the right.

STUART KYLE DUNCAN
United States Circuit Judge

Appendix B

NORTHERN DISTRICT OF TEXAS
FILED

AUG 27 2019

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 FORT WORTH DIVISION

CLERK, U.S. DISTRICT COURT
 By _____ Deputy

LAWRENCE EDWARD THOMPSON, §

Petitioner, §

V. §

No. 4:19-CV-669-A

BRYAN COLLIER, §

Respondent. §

MEMORANDUM OPINION

and
ORDER

This is a petition for a writ of habeas corpus under 28 U.S.C. § 2254 filed by petitioner, Lawrence Edward Thompson, against Bryan Collier, respondent. After having considered the petition and relief sought by petitioner, the court has concluded that the petition should be summarily dismissed for lack of subject matter jurisdiction.

I. FACTUAL AND PROCEDURAL HISTORY

By way of this petition, petitioner challenges his 1974 state-court conviction and 5-year sentence in Tarrant County, Texas, for sodomy. (Pet. 2.) The petition was received by the clerk of court for filing on August 26, 2019. No service has issued upon respondent.

II. SUBJECT MATTER JURISDICTION

Generally, for this court to have subject matter

jurisdiction over a claim(s) under § 2254, the petitioner must be "in custody" pursuant to the underlying conviction and sentence the subject of the proceeding. *Lackawanna Cty. Dist. Att'y v. Coss*, 532 U.S. 394, 394 (2001); *Maleng v. Cook*, 490 U.S. 488, 492 (1989). A federal court lacks subject matter jurisdiction to entertain a § 2254 action if, at the time the habeas petition is filed, the prisoner is not "in custody" under the conviction and sentence he seeks to attack. *Maleng*, 490 U.S. at 490-91.

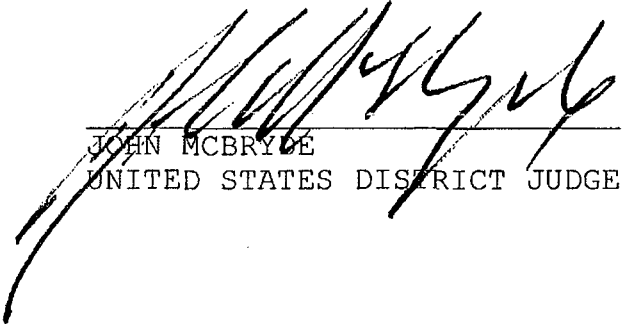
The website for the Correctional Institutions Division of the Texas Department of Criminal Justice has no inmate currently confined under petitioner's name and his 5-year sentence for the underlying conviction was likely discharged decades ago; thus, he was not "in custody" on the conviction at the time he filed this federal petition on August 26, 2019. Because petitioner fails to demonstrate that he was "in custody" under the 1974 conviction and sentence when this petition was filed, he may not now challenge the conviction directly in a § 2254 petition.

For the reasons discussed herein,

The court ORDERS that the petitioner's petition for writ of habeas corpus under 28 U.S.C. § 2254 be, and is hereby, summarily dismissed with prejudice for lack of subject matter

jurisdiction.¹ The court further ORDERS that a certificate of appealability be, and is hereby, denied.

SIGNED August 27, 2019.



JOHN MCBRYDE
UNITED STATES DISTRICT JUDGE

¹Because the court lacks jurisdiction in this case, no ruling is made on petitioner's application to proceed *in forma pauperis*.

Appendix C

Plagiarism

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED OCT 21 2021 CLERK, U.S. DISTRICT COURT By _____ Deputy
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LAWRENCE EDWARD THOMPSON,
Petitioner,
v.
BRYAN COLLIER,
Respondent.

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No. 4:19-CV-669-A

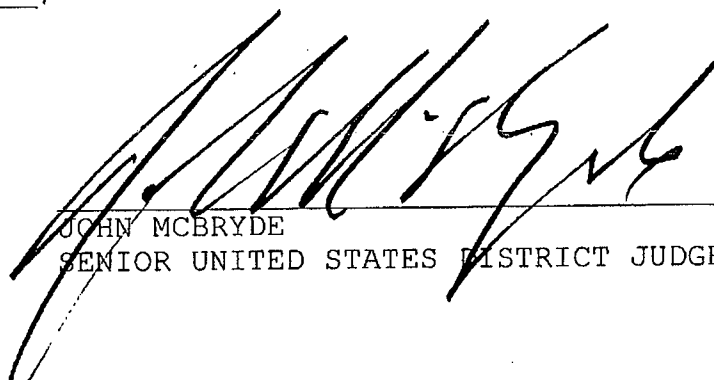
ORDER DENYING RULE 60(b)(6) MOTION

Came on for consideration petitioner Lawrence Edward Thompson's motion for relief from judgment (doc. 20) pursuant to rule 60(b)(6) of the Federal Rules of Civil Procedure. On August 27, 2019, the court dismissed this habeas action under 28 U.S.C. § 2254, in which petitioner challenged his 1974 state-court conviction for sodomy, for lack of subject matter jurisdiction. (Op. 2, doc. 6.) Petitioner has filed a prior motion for relief from judgment under rule 60(b)(6), which was denied. (Mot., doc. 8.) This second such motion is untimely. A motion under rule 60(b)(6) must be made within a reasonable time after the entry of judgment. *Gonzalez v. Crosby*, 545 U.S. 524, 528 n.2 (2005); FED. R. Civ. P. 60(c)(1). In the instant motion, filed over two years after entry of the court's judgment, petitioner raises the same or similar claims or arguments or claims or arguments that could have been raised in his prior motion and he provides no justification for his delay. The Fifth Circuit has made clear that a delay of over two years renders a rule 60(b)(6) motion

untimely particularly when the petitioner knew the substance of his claims or arguments and provides no plausible reason for the delay. See *First Republic Bank Fort Worth v. Norglass, Inc.*, 958 F.2d 117, 120 (5th Cir. 1992) (finding two-year delay in filing rule 60(b)(6) motion is not within reasonable time where there is no plausible justification for the delay); *Scheanette v. Quarterman*, 309 F. App'x 870, 872 n.2 (5th Cir. 2009) (denying rule 60(b)(6) motion as untimely where the petitioner offered no explanation for why it took him nearly two years to seek relief, and grounds he raised were known to him at time his petition was filed).

Therefore, for the reasons discussed, it is ORDERED that petitioner's rule 60(b)(6) motion be, and is hereby, denied. It is further ORDERED that a certificate of appealability be, and is hereby, denied.

SIGNED October 21, 2021.



JOHN MCBRYDE
SENIOR UNITED STATES DISTRICT JUDGE

Appendix D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED DEC - 1 2021 CLERK, U.S. DISTRICT COURT By _____ Deputy
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LAWRENCE EDWARD THOMPSON,

Petitioner,

v.

BRYAN COLLIER,

Respondent.

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No. 4:19-CV-669-A

Rec'd 12/9/21

ORDER DENYING MOTION FOR RECONSIDERATION

On August 27, 2019, the court summarily dismissed this habeas action in which petitioner challenged a 1974 state-court conviction and 5-year sentence for lack of subject matter jurisdiction as petitioner was no longer "in custody" under the conviction and sentence when the petition was filed. (Mem. Op. & Final J., docs. 6 & 7). Petitioner filed a prior rule 60(b)(6) motion challenging the August 27 dismissal and multiple motions to reconsider the denial of that motion. (Mots., docs. 8, 11, 15, 16.) Thereafter, Petitioner filed a second rule 60(b)(6) motion challenging the August 27 dismissal, which the court denied on October 21, 2021, as untimely. (Order, doc. 21.) Now before the court is petitioner's motion for reconsideration of the court's October 21 order. In the order, the court explained that petitioner

raises the same or similar claims or arguments or claims or arguments that could have been raised in his

prior motion and he provides no justification for his delay. The Fifth Circuit has made clear that a delay of over two years renders a rule 60(b)(6) motion untimely particularly when the petitioner knew the substance of his claims or arguments and provides no plausible reason for the delay.

(*Id.* at 1-2 (citations omitted).)

In this motion for reconsideration, petitioner requests that the court reconsider its ruling on the basis that (1) he did not know the substance of the claims or arguments or the effect they would have on his claims; (2) he did not know of the decision in *Trevino v. Thaler*, 569 U.S. 413 (2013); and (3) he is unable to find any case in which a judge has denied relief based on the premise that the claims or arguments could have been raised in a prior motion, that has placed a time limit on when a petitioner must raise an actual-innocence claim, or where a petitioner must satisfy the "in custody" requirement to proceed. (*Id.* at 2). However, simple ignorance of the law, alone, does not toll the time to bring a rule 60(b)(6) motion. *See Poullard v. Howard*, No. 4:20-CV-454, 2021 WL 5118160, at *2 (S.D. Tex. Oct. 6, 2021).

Petitioner also asserts that he waited over two years to file the motion because (1) he was in the Veteran's Hospital from October 6, 2019, until February 18, 2020; (2) the COVID-19 pandemic prevented him from visiting the law library and accessing a computer to do legal research; and he was

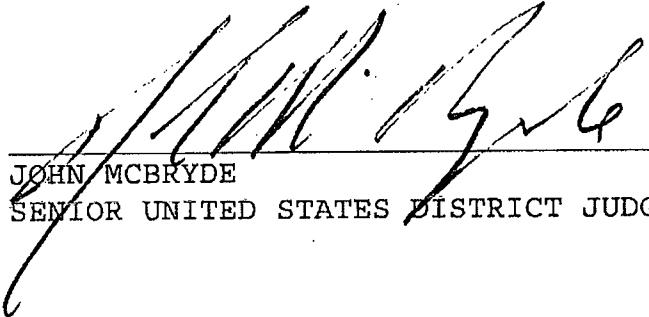
intermittently incarcerated on an unrelated parole issue. (*Id.* at 2-3.) Without additional specificity or any evidentiary support however the court will not extend the time petitioner had for bringing the rule 60(b)(6) motion.

WARNING

Federal courts have authority to levy sanctions in response to abusive litigation practices. *In re Stone*, 986 F.2d 898, 902 (5th Cir. 1993). Sanctions may be appropriate when a pro se litigant has a history of submitting multiple frivolous claims and can include restrictions on the ability to file future lawsuits without leave of court and monetary sanctions. *See* FED. R. CIV. P. 11; *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008); *Mendoza v. Lynaugh*, 989 F.2d 191, 195-97 (5th Cir. 1993). If petitioner persists in filing frivolous, repetitive, and/or otherwise abusive filings, he is **WARNED** that the filing of any such pleadings or motions, which have taken up a disproportionate amount of the court's time and resources, will result in the imposition of sanctions, including a monetary

penalty, a bar to filing any further habeas petitions, motions or lawsuits, and/or other impediments.

SIGNED December 1, 2021.



JOHN MCBRYDE
SENIOR UNITED STATES DISTRICT JUDGE