IN THE

SUPREME COURT of the UNITED STATES

STACY L. CONNER,
petitioner,

V.

BOBBY LUMPKIN, Director, TDCj-CID;
KEN PAXTON, Tx. Attorney General,
respondent(s).

Case No. 22A307

APPENDIX

On Petition for Writ of Certiorari to
the U.S. Court of Appeals 5th Circuit, No. 21-10922
and USDC, Lubbock Division, Case No. 5:18-CV-175(H)

PETITION FOR WRIT OF CERTIORARI

STACY L. CONNER
#1428940 Polunsky Unit
3872 FM 350, South
Livingston, Tx. 77351-0000
Pro Se Petitioner

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APPENDIX A-1

5th Cir. 'Denied' Conner a COA
on 5/23/2022

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
April 29, 2022
Lyle W. Cayce
Clerk

No. 21-10922

STACY L. CONNER,

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 Northern District of Texas
USDC No. 5:18-CV-175

ORDER:

Stacy Conner moves for a certificate of appealability ("COA") to appeal the dismissal of his 28 U.S.C. § 2254 petition.[1] Conner asserts that the district court improperly denied his petition based on its procedural ruling, which concluded, inter alia, that his petition was barred by the

[1] The district court also denied Conner's petition for reconsideration and request for a COA.

Antiterrorism and Effective Death Penalty Act's one-year limitation period. *See* 28 U.S.C. § 2244(d)(1).[2]

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2); *accord Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). Where, as here, the district court has denied a request for habeas relief on procedural grounds, the movant 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 . . . whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484. Conner has not met this standard.

Accordingly, IT IS ORDERED that the motion for a COA is DENIED.

/s/ *Catharina Haynes*
CATHARINA HAYNES
United States Circuit Judge

[2] The district court also concluded that Conner's alleged due process claim for injunctive relief was not cognizable in the habeas context. *See Pierre v. United States*, 525 F.2d 933, 935–36 (5th Cir. 1976) ("Simply stated, habeas is not available to review questions unrelated to the cause of detention. Its sole function is to grant relief from unlawful imprisonment or custody[,] and it cannot be used properly for any other purpose.").

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APPENDIX A-2

5th Cir. 'denied petition for rehearing'
on 7/19/2022

United States Court of Appeals for the Fifth Circuit

No. 21-10922

STACY L. CONNER,

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 Northern District of Texas
USDC No. 5:18-CV-175

ON MOTION FOR RECONSIDERATION
AND REHEARING EN BANC

Before HAYNES, ENGELHARDT, and OLDHAM, *Circuit Judges.*

PER CURIAM:

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.

APPENDIX A-2

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APPENDIX A-3

Supreme Court Granted an extension of time
to file for a Writ of Certiorari
due date of 11/28/2022

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 13, 2022

Mr. Stacy L. Conner
Prisoner ID #1428940
Polunsky
3872 FM 350 South
Livingston, TX 77351-0000

Re: Stacy L. Conner
v. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, et al.
Application No. 22A307

Dear Mr. Conner:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Alito, who on October 13, 2022, extended the time to and including November 28, 2022.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Sara Simmons
Case Analyst

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APPENDIX B-1

U.S.D.C. denied §2254 habeas corpus
on 7/27/2022

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

STACY L. CONNER,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

No. 5:18-CV-00175-H

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Stacy L. Conner, proceeding pro se and *in forma pauperis*, filed a form petition for writ of habeas corpus under 28 U.S.C. § 2254 on July 16, 2018.[1] (Dkt. No. 1.) On the form, he indicated that he is not challenging his judgment of conviction or sentence, nor is he challenging a parole-revocation or prison-disciplinary proceeding. (Dkt. No. 1 at 2.) Instead, he challenges "a post-conviction issue, a distinct due process violation of denial of access-to-court." (*Id.*) Specifically, Petitioner challenges the Texas Court of Criminal Appeals' (TCCA) dismissal of his petition for discretionary review (PDR) as untimely. Petitioner seeks a "written opinion consistent with the 'mailbox rule' and the many binding precedents that govern it" as to the timeliness of his PDR. (*See id.* at 7.) Alternatively, Petitioner seeks an evidentiary hearing to expound on his claims. (*Id.*)

Respondent filed an answer with copies of Petitioner's relevant records. (Dkt. Nos. 10–11.) Respondent argues that the petition must be dismissed with prejudice because it is barred by the AEDPA[2] statute of limitations and because it is without merit. (Dkt. No. 11 at 1, 7–14.) Petitioner filed a reply. (Dkt. No. 14.) As explained below, the Court

[1] *See Spotville v. Cain*, 149 F.3d 374, 378 (5th Cir. 1998) (providing that a prisoner's habeas petition is deemed to be filed when he delivers the papers to prison authorities for mailing).

[2] Antiterrorism and Effective Death Penalty Act of 1996.

concludes that Petitioner has failed to show that he is eligible for habeas relief. Additionally, for the reasons stated in Respondent's answer, the petition is untimely. Therefore, the petition is denied and dismissed with prejudice.

1. Background

Petitioner is serving a life sentence for aggravated robbery out of the 137th District Court of Lubbock County, Texas. In cause number 2006413481, styled *State of Texas v. Stacy L. Conner*, Petitioner was convicted and sentenced by a jury on March 22, 2007. He timely filed a notice of appeal, but on April 29, 2009, the Seventh Court of Appeals affirmed the conviction. Petitioner sought, and was granted, two extensions of time to file his PDR, making the final due date January 14, 2010. Petitioner contends that he deposited his PDR in the prison mail system the morning of January 13, 2010. But, on March 17, 2010, the TCCA dismissed the PDR, finding that it was untimely. Petitioner immediately filed a motion for reconsideration, but the Clerk of the TCCA rejected the motion for non-compliance.

Petitioner subsequently filed a variety of motions and actions in state and federal courts to challenge the finding that his PDR was untimely. (*See* Dkt. No. 2 at 3-7.) This includes a petition for writ of mandamus in the United States District Court for the Eastern District of Texas, Beaumont Division, filed on December 21, 2010 and dismissed on July 25, 2011. (*See* No. 1:10-CV-00816, Dkt. No. 6.) Petitioner appealed the dismissal of his mandamus action, but the United States Court of Appeals for the Fifth Circuit affirmed the judgment on July 26, 2012.[3] *See Conner v. Texas Court of Criminal Appeals*, 481 F.App'x

[3] Interestingly, the Fifth Circuit also concluded that "[e]ven if [Petitioner's] complaint is treated as arising under [42 U.S.C.] § 1983, it fails to state a cognizable denial-of-access-to-the-courts claim because [Petitioner] was allowed to prepare and transmit his PDR to the state court." *See Conner v. Texas Court of Criminal Appeals*, 481 F.App'x 952, 953 (5th Cir. 2012) (citations omitted).

952 (5th Cir. 2012). The United States Supreme Court denied Petitioner's petition for writ of certiorari on November 8, 2016. *See Conner v. State*, 137 S. Ct. 502 (2016).

Petitioner filed his first state habeas application—challenging only the dismissal of his PDR as untimely—on June 8, 2017. Petitioner admits that he did not file a state application for writ of habeas corpus sooner because he was focused on challenging the TCCA's allegedly faulty ruling on the timeliness of his PDR. (*See* Dkt. No. 2 at 11.) Petitioner feared "'being accused' of [filing a] 'successive writ' if/when he actually challenges his conviction." *Id.* In other words, Petitioner hesitated to file a state habeas application challenging his actual conviction because he was focused on challenging the timeliness determination of his PDR. The TCCA denied his state writ application without written order on July 19, 2017. This federal habeas petition was filed almost one year later on July 16, 2018.

2. Legal Standards

It is well settled that federal habeas relief lies only to rectify a violation of federal constitutional rights. *See Montoya v. Scott*, 65 F.3d 408, 418-20 (5th Cir. 1995.) The courts entertain federal petitions under Section 2254 "only on the ground" that the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2254(a). Federal habeas relief will not issue to correct alleged errors of state constitutional, statutory, or procedural law. *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991).

3. Discussion and Analysis

After carefully reviewing the state-court records and the pleadings, the Court finds that an evidentiary hearing is not necessary to resolve the instant petition. *See Young v. Herring*, 938 F.2d 543, 560 n. 12 (5th Cir. 1991) ("[A] petitioner need not receive an

evidentiary hearing if it would not develop material facts relevant to the constitutionality of his conviction.").

Petitioner has repeatedly stated that he is not challenging his conviction. Indeed, none of his pleadings contain a request for release or a challenge to the fact or duration of his confinement. Additionally, Petitioner's due process allegations, if true, would not automatically entitle him to accelerated release or nullify an otherwise lawful confinement. Petitioner seeks an injunctive remedy that is simply not available to him in the context of a habeas petition. To the extent the TCCA applied a state procedural rule to determine that Petitioner's PDR was untimely, Petitioner's claim is not cognizable. And, Petitioner's characterization of his claim as a due process claim does not change that conclusion.

Finally, as explained by Respondent, even if Petitioner's claims were cognizable under Section 2254, this federal habeas petition is barred by the applicable statute of limitations because it was filed several years too late, and Petitioner has not demonstrated that he is entitled to equitable tolling. (*See* Dkt. No. 11 at 7-10.) Also, while Petitioner may have been diligent in his efforts to challenge the TCCA's determination that his PDR was untimely, the fact remains that Petitioner's challenges to the state post-conviction proceedings merely attack proceedings collateral to his detention and not the detention itself. Petitioner's claim does not satisfy any of the exceptions to AEDPA's statute of limitations. Accordingly, Petitioner is not entitled to habeas relief.

4. Conclusion

For the reasons discussed above, Petitioner's petition for writ of habeas corpus under 28 U.S.C. § 2254 is dismissed with prejudice. Also, pursuant to Rule 22 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2253(c), Petitioner has failed to show that reasonable jurists would (1) find this Court's "assessment of the constitutional claims

debatable or wrong" or (2) find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." Thus, any request for a certificate of appealability should be denied. *Slack v. McDaniel,* 529 U.S. 473, 484 (2000).

All relief not expressly granted and any pending motions are denied.

So ordered.

Dated July 27, 2021.

JAMES WESLEY HENDRIX
United States District Judge

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APPENDIX B-2

U.S.D.C. denied Petition for Rehearing/Motion 60(b)

On 9/28/2021

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

STACY L. CONNER,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

No. 5:18-CV-00175-H

ORDER

Petitioner filed a "Petition for Rehearing/Reconsideration," seeking reconsideration of the July 27, 2021 denial of his habeas petition. (Dkt. No. 25.) As authority for reconsideration, Petitioner cites to the following rules: Federal Rule of Appellate Procedure 40(a), and Federal Rules of Civil Procedure 50(b), 52(b), 59, and 60(b). As explained below, the request for reconsideration is denied.

1. Background

Petitioner is confined in the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID) serving a life sentence for aggravated robbery. He filed this petition for writ of habeas corpus under 28 U.S.C. § 2254, challenging the Texas Court of Criminal Appeals' (TCCA) dismissal of his petition for discretionary review (PDR) as untimely. The only relief sought—besides an evidentiary hearing to expound on his claims—was "a written opinion consistent with the 'mailbox rule' and the many binding precedents that govern it" as to the timeliness of his PDR. (*See* Dkt. No. 1 at 7.)

After briefing from the parties, the Court conducted a review of Petitioner's claims on the merits and found that Petitioner had failed to show that he is eligible for habeas relief

because the injunctive relief sought is simply not available in the context of a habeas petition. (*See* Dkt. No. 21 at 4.) The Court also concluded that to the extent the TCCA applied a state procedural rule to determine that his PDR was untimely, the claim is not cognizable, and that his characterization of his claim as a due process violation does not change that conclusion. (*Id.*) Finally, the Court found that even if Petitioner's claims were cognizable under Section 2254, the petition is barred by the applicable statute of limitations because it was filed several years too late, and Petitioner has not demonstrated that he is entitled to equitable tolling. (*Id.*) The Court further emphasized the fact that Petitioner's challenges to the state post-conviction proceedings merely attacked proceedings collateral to his detention and not the detention itself. (*Id.*)

Now, Petitioner files his "Petition for Rehearing/Reconsideration," seeking reconsideration under Federal Rule of Appellate Procedure 40(a), and Federal Rules of Civil Procedure 50(b), 52(b), 59, and 60(b). Petitioner rehashes many of the arguments contained in his petition and takes issue with this Court's denial and dismissal of his petition without answering the question he sought to be answered. Consequently, Petitioner appears to conclude that the Court did not reach the merits of his petition, but rather dismissed the petition based on procedural grounds. Petitioner also objects to the Court's denial of a certificate of appealability.

2. Federal Rule of Appellate Procedure 40(a) and Federal Rule of Civil Procedure 50(b) are not relevant in this civil action.

First, the Court notes that this is Petitioner's second attempt to invoke Federal Rule of Appellate Procedure 40(a) to have his petition reconsidered. (*See* Dkt. No. 23.) But the Court previously advised Petitioner that Rule 40(a) does not apply to federal district courts—rather, it refers to procedures for filing a motion for panel rehearing before the

appellate court, after disposition of an appeal. (*See* Dkt. No. 24.) Likewise, Rule 50(b)—referring to renewing a motion for judgment as a matter of law after a jury trial—does not apply to this case, which did not involve a trial. Petitioner is not entitled to reconsideration under either Federal Rule of Appellate. P. 40(a) or Federal Rule of Civil Procedure 40(a).

3. Petitioner's motion under Federal Rules of Civil Procedure 52(b) and 59 is untimely.

Petitioner next asks the Court for amended or additional findings under Rule 52(b), and for an order altering or amending the judgment under Rule 59. However, both Rule 52(b) and Rule 59 require that the relevant motions must be filed no later than 28 days after entry of the judgment. This case was dismissed by order and judgment entered July 27, 2021—making any motions under Rule 52(b) or Rule 59 due on or before Tuesday, August 24, 2021. This pleading, dated September 8, 2021, could not have been filed before the deadline. Also, the Court previously admonished Petitioner that it could not grant extensions of the time limits provided in Rules 59(e) or 60(b). (*See* Dkt. No. 24.) Petitioner is not entitled to relief under either Rule 52(b) or 59.

4. Petitioner's motion under Federal Rule of Civil Procedure 60(b) fails to show the existence of exceptional circumstances.

Petitioner's Rule 60(b) motion appears to be timely, however. *See* Fed. R. Civ. P. 60(c). Rule 60(b) allows trial courts to relieve a party from a final judgment on several grounds, including mistake, fraud, or newly discovered evidence. The rule also contains a "catch-all" provision allowing for relief based on "any other reason." *See Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 636 (5th Cir. 2005).

Courts reopen judgments under Rule 60(b) only upon a showing of "extraordinary circumstances." *Raby v. Davis*, 907 F.3d 880, 884 (5th Cir. 2018), *cert. denied*, 139 S. Ct.

2693 (2019), *reh'g denied*, 140 S. Ct. 19 (2019). Such extraordinary circumstances "rarely occur in the habeas context." *Id.* (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005)). In habeas cases, Rule 60(b) "may not be used to attack 'the substance of the federal court's resolution of a claim on the merits.'" *Haynes v. Davis*, 733 F. App'x 766, 769 (5th Cir. 2018), *cert. denied*, 139 S. Ct. 917 (2019); *Gonzales*, 545 U.S. at 532. Rule 60(b) motions "may challenge only erroneous rulings which precluded a merits determination," such as "a denial for such reasons as failure to exhaust, procedural default, or statute-of-limitations bar." *Id.*

Here, Petitioner fails to show the existence of extraordinary circumstances. As previously mentioned, he rehashes the arguments raised in his pleadings and takes issue with the Court's conclusion that his complaint was not cognizable in the federal habeas context—a finding that was a determination on the merits of his petition. Petitioner also appears to argue that his petition, filed within one year after his first state habeas application was filed, was timely under the applicable statute of limitations.

The majority of Petitioner's arguments in support of his Rule 60(b) motion fail to challenge a ruling that precludes a merits determination. *See Hayes*, 733 F.App'x at 769. Rather, it is an attack on the substance of the Court's order denying and dismissing his petition. Moreover, to the extent Petitioner challenges the Court's alternative determination that his petition was barred by the AEDPA[1] statute of limitations, the Court finds that his interpretation of the statute is mistaken. Petitioner has failed to establish at least one of the Rule 60(b) requirements. *See* Fed. R. Civ. P. 60(b)(1)-(6). As such, Supreme Court and Fifth Circuit case law precludes the Court from granting the motion.

[1] Antiterrorism and Effective Death Penalty Act of 1996.

5. Conclusion

For the reasons discussed above, Petitioner's "Petition for Rehearing/ Reconsideration" is denied. Also, pursuant to Rule 22 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2253(c), Petitioner has failed to show that reasonable jurists would (1) find this Court's "assessment of the constitutional claims debatable or wrong" or (2) find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." Thus, any request for a certificate of appealability from this order should be denied. *Slack v. McDaniel,* 529 U.S. 473, 484 (2000).

So ordered.

Dated September 28, 2021.

JAMES WESLEY HENDRIX
United States District Judge

Monday, November 21, 2021

Clerk's Office
Supreme Court of the U.S.
1 First Street, N.E.
Washington, D.C. 20543-0001

Re: Stacy L. Conner v. Bobby Lumpkin
No. 22A307

Dear Clerk:

I 'timely submit' for filing a fully packaged "Pro Se Petition for Writ of Certiorari".

I do so with much humbleness in both heart and spirit. Asking for your lenient understanding that I am but a layperson un- schooled nor taught in law. Who is forced by circumstance to present in my own behalf the best comprehensive argument possible for the Court's consideration.

Coming from a man that never even finished the 7th grade, the following product represents a somewhat monumental accomplishment in and of itself.

I beg for your favor in overlooking any flaws or imperfections you may find. If such does exist, it was not done with any measure of flagrant disregard for this Court's exalted standards.

I can only assure and attest to the fact that the substance and nature of my claims are soundly grounded in Constitutional Law. The issues I bring are quite significant when viewed through a clear honest lens not smeared with criticism, emotion, nor prejudice; but with an eye aimed only at the Administration of true and Fair Justice. Wherein here, has a strong potential of effecting a large number of our country's people.

With this in mind I beseech your valuable assistance in this matter by placing my application in the hands of the person that YOU FEEL has the best chance toward a conscientious analysis.

I can not help but dwell on the confirmation hearings of a few months ago, when the Honorable Tetanji Brown Jackson quite literally stole my admiration and heart, as I feel she did of americans. I recall her unflappable composure while under attack during those hearings. As I've said before, I was paying close attention on that monday morning, March 21, 2022 when she so eloquently voiced her desire to be inspirational for future generations, while expressing her love of this country and the Constitution itself, along with her belief in personal liberty . . . She made me believe in her. How cool is that? I'ld like to think that each of the Justices of the Court could/would just as easily instill that amount of confidence in my heart; if given the chance.

On that note, I end this much felt letter of personal revelation to you, Dear Clerk.

My Petition, my hopes, my Prayers I leave now in your entrusted hands. Help me, if you can. Thank You!

Sincerely,

STACY L. CONNER
#1428940 Polunsky Unit
3872 FM 350, South
Livingston, Tx. 77352