

United States Court of Appeals
for the Fifth Circuit

No. 21-10808

ROBERT DALE HINES,

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. 1:18-CV-107
USDC No. 1:18-CV-108

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:

A member of this panel previously DENIED Appellant's motion for a certificate of appealability and motion for reversal of conviction and immediate release. The panel has considered Appellant's motion for reconsideration.

IT IS ORDERED that the motion is DENIED.

United States Court of Appeals for the Fifth Circuit

No. 21-10808

United States Court of Appeals
Fifth Circuit

FILED

March 28, 2022

ROBERT DALE HINES,

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. 1:18-CV-107
USDC No. 1:18-CV-108

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:

Robert Dale Hines, Texas prisoner # 02020452, moves this court for a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 application. Hines filed the application to challenge his 20-year sentence for tampering with evidence and possession of more than one gram of methamphetamine. Hines contends that the police seized drugs in violation of the Fourth Amendment, his Fifth Amendment right to an

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NO. 21-10808

ROBERT DALE HINES
Petitioner-Appellant

versus

BOBBY LUMPKIN
Respondent-Appellee

Petition for Panel Rehearing

Robert Dale Hines, Texas prisoner #2020452 moves this court for Petition for Panel Rehearing. Petitioner believes that the court has overlooked or misapprehended that my Constitutional Right were indeed violated.

- 1) Police seized drugs in violation of my Fourth Amendment
they didn't have a warrant to search *Terry v. Ohio*
- 2) Fifth Amendment right to an impartial trial was violated
The Court used a corrupt DVD video during my trial to convict
The Indictment was married to only concealment - not alter or destroy.
Stirone v. U.S. 361
3. Received ineffective assistance of counsel at trial and on appeal.

No motions were filed at trial and on appeal

Trial counsel fail to object to the jury charge that added alter and destroy, he replied no objections your honor

Virgil v. Dretke 446 F.3d 598

I certify that the foregoing was placed in the internal mail system
on 4- - 22

Sincerely

Robert Dale Hines #2020452

4- - 22

No. 21-10808

impartial trial was violated, and he received ineffective assistance of counsel at trial and on appeal.

To obtain a COA with respect to the denial of a § 2254 application, an applicant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). Where a district court has rejected a claim on the merits, an applicant “must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack*, 529 U.S. at 484. When a district court has rejected a claim on procedural grounds, an applicant must show “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.” *Id.* Hines has not made the required showing. *See id.*

Further, because Hines fails to make the required showing for a COA, we do not reach the issue whether the district court erred by denying an evidentiary hearing. *See United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020), *cert. denied*, 142 S. Ct. 122 (2021).

Accordingly, Hines’s motions for extraordinary relief and for a COA are DENIED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

ROBERT DALE HINES,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

No. 1:18-CV-00107-H

(Consolidated with
No. 1:18-CV-00108-C)

JUDGMENT

For the reasons stated in the Court's order entered today, it is ordered, adjudged, and decreed that this petition for writ of habeas corpus is dismissed with prejudice.

Dated July 27, 2021.



JAMES WESLEY HENDRIX

United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

ROBERT DALE HINES,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

No. 1:18-CV-00107-H

(Consolidated with
No. 1:18-CV-00108-C)

ORDER

Petitioner Robert Dale Hines, proceeding pro se, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 to challenge his state-court convictions and sentences.

Respondent filed an answer with copies of Petitioner's relevant state-court records.

Petitioner filed a reply. As explained below, the Court finds that the petition must be denied and dismissed with prejudice.

1. Background

Petitioner challenges his conviction and 20-year sentence out of the 42nd District Court of Taylor County, Texas. In cause number 25861A, styled *State of Texas v. Robert Dale Hines*, Petitioner was charged with one count of tampering with evidence and one count of possessing methamphetamine, a controlled substance, in an amount weighing between one and four grams.¹ (See Dkt. No. 13-1 at 4-5.) Each count of the indictment was enhanced with an allegation of a prior conviction for sexual assault. *Id.* The State later gave notice of intent to allege, for punishment-enhancement purposes, Petitioner's two prior convictions for possession of a controlled substance and a prior conviction for sexual assault of a child. (See *id.* 6-7.) Petitioner pled not guilty, but a jury found him guilty of both counts. On

¹ Petitioner was also charged with a third count of evading arrest with a vehicle, but that count was abandoned at trial.

August 25, 2015, the trial court sentenced Petitioner to 20-years' imprisonment for each count, to be served concurrently in the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID). (*See id.*, 7-10.)

Petitioner appealed, but the Eleventh Court of Appeals affirmed his conviction in a published opinion on October 31, 2017. *See Hines v. State*, 535 S.W.3d 102 (Tex. App.—Eastland 2017, pet. ref'd). The Texas Court of Criminal Appeals (TCCA) refused his petition for discretionary review (PDR) on May 2, 2018. (*See* Dkt. No. 16-12.)

Next, Petitioner filed two separate state habeas applications—each challenging a separate count—which the TCCA initially denied without written order on the findings of the trial court without a hearing on April 11, 2018. (*See* Dkt. Nos. 16-17, 16-22.) Two months later, Petitioner filed a third state habeas application challenging both counts. On July 25, 2018, the TCCA issued an order (1) withdrawing the denials of Petitioner's first two state habeas applications and instead dismissing them as improperly filed, and (2) denying relief on Petitioner's third state habeas application after reviewing the record. (*See* Dkt. No. 16-21.)

Petitioner filed two federal petitions on August 1, 2018.² *See also* No. 1:18-CV-00108. The Court consolidated the two petitions into this action. (Dkt. No. 6.) The Court understands Petitioner to challenge his convictions on these grounds:

- 1) Police seized drugs without a warrant in violation of the Fourth Amendment;
- 2) An objectionable jury member [Mr. Armstrong] sat on the jury after trial counsel made a motion to strike him in violation of the Fifth Amendment;
- 3) Trial counsel was ineffective because he failed to object to the abstract and application paragraphs in the jury charge on his tampering with evidence count; and

² *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).

- 4) Both trial counsel and appellate counsel were ineffective because they didn't file any pre-trial or post-trial motions.

Petitioner seeks reversal of his conviction and immediate release from confinement.

Respondent argues that the petition is without merit and should be denied and dismissed with prejudice. Specifically, Respondent argues that Petitioner's first ground regarding the alleged warrantless seizure is barred by *Stone v. Powell*, 428 U.S. 465 (1976), because Petitioner had the opportunity for full and fair litigation of his Fourth Amendment claim at the state court level. Thus, it is not cognizable on federal habeas corpus review. Further, Respondent argues that Petitioner has failed to overcome his burden under AEDPA³ because he has not shown that the TCCA's denial of his claims was contrary to or involved the unreasonable application of federal law or was based upon an unreasonable determination of the facts presented. *See* 28 U.S.C. § 2254(d). Additionally, Respondent contends that Petitioner has not demonstrated that the objectionable venireperson Armstrong actually served on his jury or otherwise violated his Fifth Amendment rights. Finally, Respondent argues that Petitioner's claims that trial counsel and appellate counsel were ineffective fail because they are conclusory and fail to "allege—let alone demonstrate—on what grounds trial counsel should have objected to the jury charge, or what pre-trial or post-trial motions his trial or appellate counsel should have filed." (Dkt. No. 13 at 16.)

Petitioner filed a one-page document titled "Petitioner's Response Motion for Judgment on the Instant Pleading and Instant Action on the Consolidation of Cases" (Dkt. No 20), and a Motion for Evidentiary Hearing. (Dkt. No. 21). However, neither document addressed the arguments raised by Respondent's answer.

³ Antiterrorism and Effective Death Penalty Act of 1996.

2. Discussion and Conclusion

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.").

The Court has conducted a thorough examination of Petitioner's pleadings, Respondent's answer, the relevant state court records, and the applicable law. Based upon the facts and law set forth in Respondent's answer, the Court finds that Petitioner's claims should be denied.

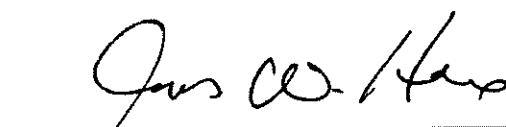
The Court therefore orders:

- (1) The petition for writ of habeas corpus is denied and dismissed with prejudice.
- (2) All relief not expressly granted is denied and any pending motions are denied.
- (3) Pursuant to Rule 22 of the Federal Rules of Appellate Procedure and

28 U.S.C. § 2253(c), this Court finds that a certificate of appealability should be denied. For the reasons set forth above and in Respondent's answer, Petitioner has failed to show that reasonable jurists would find (1) this Court's "assessment of the constitutional claims debatable or wrong," or (2) "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." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Court will enter judgment accordingly.

Dated July 27, 2021.


JAMES WESLEY HENDRIX
United States District Judge