

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 5, 2022

Lyle W. Cayce
Clerk

CLARENCE LEE HOOKER,

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. 5:19-CV-19

ORDER:

Clarence Lee Hooker, Texas prisoner # 01915508, seeks a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2254 application on the ground that it was barred by the one-year (1) statute of limitations of 28 U.S.C. § 2244(d), although the court also (2) determined the claims lacked merit. Hooker's COA motion and brief address only the merits of his constitutional claims and do not address whether (3) reasonable jurists could debate the district court's procedural ruling. He thus

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No. 21-11222

fails to make the required showing. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In any event, reasonable jurists could not debate the district court's procedural ruling that Hooker's application was untimely. Hooker's conviction became final on September 29, 2016, at which point the one-year statute of limitations began to run. 28 U.S.C. § 2244(d)(1). Hooker filed his state postconviction applications in March 2018 and July 2018, after the one-year limitations period expired, and thus his state applications could not toll the limitations period. *See id.* § 2244(d)(2). Therefore, Hooker's § 2254 application, filed in January 2019, was untimely.

The application for a COA is DENIED.

/s/ James L. Dennis
JAMES L. DENNIS
United States Circuit Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CLARENCE LEE HOOKER,

Petitioner,

v.

No. 5:19-CV-00019-H

DIRECTOR, TDCJ-CID,

Respondent.

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 November 16, 2021.


JAMES WESLEY HENDRIX
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CLARENCE LEE HOOKER,

Petitioner,

v.

No. 5:19-CV-00019-H

DIRECTOR, TDCJ-CID,

Respondent.

ORDER

Petitioner Clarence Lee Hooker, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging his state conviction. Respondent filed an answer and appendix with copies of relevant state-court records. Petitioner filed a reply. As explained below, the Court finds that the petition should be dismissed as untimely. Alternatively, the Court would deny the petition because it lacks merit.

1. Background

Petitioner was convicted of the offense of murder under Cause No. 2011-432,718 in the 364th District Court of Lubbock County, Texas, and is serving a life term of imprisonment. (Dkt. No. 11-1 at 41.) The judgment was affirmed on appeal, and his petition for discretionary review was refused. *Hooker v. State*, No. 07-14-00039-CR, 2016 WL 758035 (Tex. App.—Amarillo Feb. 25, 2016, pet. ref'd). On July 1, 2016, the Court of Criminal Appeals denied Petitioner's request for rehearing of the denial of discretionary

review.¹ Petitioner did not file a petition for writ of certiorari; thus, his judgment became final September 29, 2016. Sup. Ct. R. 13; *Clay v. United States*, 537 U.S. 522, 525 (2003).

On March 19, 2018, Petitioner filed his first state application for writ of habeas corpus. (Dkt. No. 11-1 at 35.) That application was denied without written order on the findings of the trial court without a hearing on July 18, 2018. (Dkt. No. 12-26.) He filed a second state application that was dismissed as an abuse of the writ on August 22, 2018. (Dkt. No. 12-28.)

On January 4, 2019,² Petitioner filed his petition in this case. (Dkt. No. 1.) He alleges three grounds in support. First, the state court of appeals erred in finding that there was sufficient evidence to convict petitioner. (*Id.* at 6.) Second, the state court erred by not allowing relevant evidence regarding another suspect. (*Id.*) And third, the State failed to prove petitioner's guilt by legally sufficient evidence. (*Id.* at 7.)

Respondent answers that the petition is untimely and must be dismissed. Alternatively, Respondent argues that the claims are without merit and should be denied. (Dkt. No. 11.)

2. Standard of Review

A. Limitations

A one-year period of limitation applies to a petition for writ of habeas corpus by a person in custody pursuant to the judgment of a state court. The period runs from the latest of —

¹ Texas Courts Online, <http://search.txcourts.gov/Case.aspx?cn=PD-0280-16&coa=coscca> (last visited Oct. 22, 2021) [hereinafter “Tex. Cts. Online”].

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).

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- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- * (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- * (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- * (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of diligence.

28 U.S.C. § 2244(d)(1). Typically, the time begins to run on the date the judgment of conviction becomes final. *United States v. Thomas*, 203 F.3d 350, 351 (5th Cir. 2000). A criminal judgment becomes final when the time for seeking direct appeal expires or when the direct appeals have been exhausted. *Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987).

B. Section 2254

* A writ of habeas corpus on behalf of a person in custody under a state court judgment shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the petitioner shows that the prior adjudication:

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- (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 proceedings.

* 28 U.S.C. § 2254(d). A decision is contrary to clearly established federal law if the state court arrives at a conclusion opposite to that reached by the United States Supreme Court on a question of law or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000); *see also Hill v. Johnson*, 210 F.3d 481, 485 (5th Cir. 2000). A state-court decision will

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be an unreasonable application of clearly established precedent if it correctly identifies the applicable rule but applies it objectively unreasonably to the facts of the case. *Williams*, 529

U.S. at 407-09; *see also Neal v. Puckett*, 286 F.3d 230, 236, 244-46 (5th Cir. 2002) (*en banc*)

(explaining that the focus should be on the ultimate legal conclusion reached by the state court and not on whether that court considered and discussed every angle of the evidence).

A determination of a factual issue made by a state court is presumed to be correct. 28

U.S.C. § 2254(e)(1). The presumption of correctness applies to both express and implied

factual findings. *Young v. Dretke*, 356 F.3d 616, 629 (5th Cir. 2004); *Valdez v. Cockrell*, 274

F.3d 941, 948 n.11 (5th Cir. 2001). Absent express findings, a federal court may imply fact

findings consistent with the state court's disposition. *Marshall v. Lonberger*, 459 U.S. 422,

433 (1983). Thus, when the Texas Court of Criminal Appeals denies relief without written

order, such ruling is an adjudication on the merits that is entitled to this presumption. *Ex*

parte Torres, 943 S.W.2d 469, 472 (Tex. Crim. App. 1997). The petitioner has the burden of

rebutting the presumption of correctness by clear and convincing evidence. 28 U.S.C.

§ 2254(e)(1); *Hill*, 210 F.3d at 486.

In making its review, the Court is limited to the record that was before the state court. 28 U.S.C. § 2254(d)(2); *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

3. Analysis

A. Timeliness of the Petition

As noted above, the Court of Criminal Appeals denied Petitioner's request for rehearing of the denial of his petition for discretionary review on July 1, 2016. He had ninety days in which to file a petition for writ of certiorari in the Supreme Court. Sup. Ct. R. 13. He failed to do so, and his judgment became final on September 29, 2016. *Clay*, 537

U.S. at 525. Therefore, his petition under section 2254 was due within one year of that date unless one of the other deadlines of section 2244(d)(1) applied.³ Petitioner has not made any attempt to show, much less shown, that he is entitled to tolling for any reason.⁴ His petition is untimely and must be dismissed. *It has to do with untimely*

B. The Petition Lacks Merit

Petitioner appears to make the same basic argument in his first and third grounds-- that the evidence was insufficient to convict him. The Seventh Court of Appeals addressed the evidence at length and found it to be sufficient. (Dkt. No. 12-17.) The Texas Court of Criminal Appeals refused the petition for discretionary review. Petitioner has failed to show that the state adjudication of these claims resulted in a decision based on an unreasonable determination of the facts in light of the record or that a constitutional claim was adjudicated contrary to established federal law.

make different arguments

The proper test for sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Hooker*, 2016 WL 758035, at *2 (citing *Jackson*). In applying the standard, all credibility choices and reasonable inferences are resolved in favor of the verdict. *United States v. Resio-Trejo*, 45 F.3d 907, 911 (5th Cir. 1995). And it is not necessary that the evidence exclude every reasonable hypothesis of a petitioner's innocence or be wholly inconsistent with every conclusion except that of guilt. *Id.* For the reasons discussed in

³ The filing of Petitioner's state habeas applications does not operate to toll limitations because those petitions were filed after the one-year period of limitations expired. *Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000).

⁴ His reply only addresses the merits arguments. (Dkt. No. 15.)