

APPENDIX A

(Fifth Circuit Denial Of COA)

United States Court of Appeals
for the Fifth Circuit

No. 22-40101

United States Court of Appeals
Fifth Circuit

FILED

October 20, 2022

Lyle W. Cayce
Clerk

JASON DANIEL SEWELL,

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 Eastern District of Texas
USDC No. 4:19-CV-59

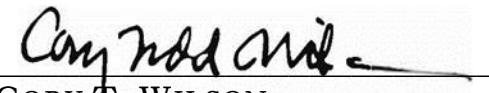
ORDER:

Jason Daniel Sewell, Texas prisoner # 02068608, moves this court for a certificate of appealability (COA) to appeal the denial and dismissal of his 28 U.S.C. § 2254 application. Sewell's § 2254 application challenged his convictions for continuous sexual abuse of a child under the age of 14 and indecency with a child younger than 17 years old. Sewell raises claims that his counsel was ineffective for: (i) failing to object to and obtain the exclusion of a portion of his taped interview with law enforcement that was played for the jury wherein (a) he indicated that he was unwilling to take a polygraph test and (b) a law enforcement officer indicated that she believed the victim;

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(ii) failing to move for a directed verdict; and (iii) failing to narrow the scope of the dates in the jury charge's application paragraph for the continuous-sexual-abuse offense.

As a preliminary matter, Sewell does not reprise in his COA motion, and therefore abandons, claims raised in his § 2254 application arguing that: (i) counsel was ineffective for allowing or failing to object to certain bad acts testimony without requesting a limiting instruction; (ii) failing to move to suppress evidence; (iii) failing to object to the admission of improper outcry testimony; (iv) failing to call a witness who was available to rebut factual claims made by the victim; and (v) failing to object to the prosecutor's leading questions regarding a critical element of the sexual abuse offense. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999). Further, Sewell's claim that his counsel was ineffective for failing to narrow the scope of the dates in the jury charge is raised for the first time in his COA motion. The court will not consider that claim. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018). Because Sewell otherwise fails to "demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," a COA is DENIED. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see* 28 U.S.C. § 2253(c)(2).



CORY T. WILSON
United States Circuit Judge

APPENDIX B

(Federal District Court Denial of Petition and COA)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JASON DANIEL SEWELL, #02068608
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VS.
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DIRECTOR, TDCJ-CID
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CIVIL ACTION NO. 4:19cv59

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation concluding that the petition for writ of habeas corpus should be denied and dismissed with prejudice. No objections were timely filed.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. The Court concludes that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is accordingly **ORDERED** the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**.

It is further **ORDERED** that all motions not previously ruled on are hereby **DENIED**.

SIGNED this 14th day of February, 2022.

Amos Mazzant
AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE