

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 07, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-50889 Serrano v. Lumpkin
USDC No. 6:19-CV-414

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Lisa E. Ferrara

By: _____
Lisa E. Ferrara, Deputy Clerk
504-310-7675

Ms. Rosa Serrano
Mr. Eran Shemuel Sharon

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 7, 2022

Lyle W. Cayce
Clerk

No. 21-50889

ROSA SERRANO,

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 Western District of Texas
USDC No. 6:19-CV-414

Before ELROD, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:

Rose Serrano, Texas prisoner # 2151723, moves this court for a certificate of appealability (COA) to appeal the denial of her 28 U.S.C. § 2254 application. Serrano filed the application to challenge her 11-year sentence for Medicaid fraud and theft of property, as well as numerous disciplinary cases. She contends that the district court erred in sua sponte raising the procedural bar with respect to her ineffective assistance of counsel claims challenging her convictions and that she exhausted the claims. She further

No. 21-50889

argues that her disciplinary cases were unwarranted and a violation of her due process rights.

To obtain a COA, Serrano 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, 484 (2000). Where a district court has rejected a claim on the merits, a movant “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 the district court’s denial of relief is based on procedural grounds, a COA may not issue unless the prisoner shows that “jurists of reason would find it debatable whether the petition 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.*

Serrano has not made the requisite showing. *See Slack*, 529 U.S. at 484. Serrano’s claims challenging her criminal contempt orders, including her claim that the state court lacked jurisdiction over her criminal cases because she had them removed to federal court are not properly before this court. *See* § 2254(a); 28 U.S.C. § 2244(b); *see also In re Serrano*, No. 21-50430 (5th Cir. Jan. 6, 2022) (unpublished) (discussing collection of cases filed by petitioner and issuance of recent sanction warning).

Accordingly, Serrano’s COA motion is DENIED. All outstanding motions are DENIED. As Serrano fails to make the required showing for a COA, we do not reach her contention that the district court erred by failing to conduct an evidentiary hearing. *See United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020).

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ROSA SERRANO #2151723

V.

BOBBY LUMPKIN

§
§
§
§
§

W-19-CA-414-ADA

ORDER

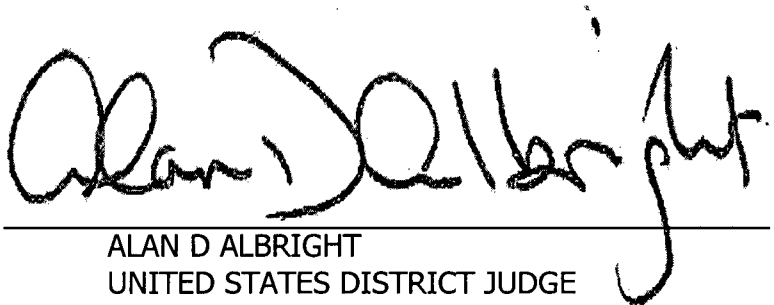
On July 2, 2021, the Court dismissed Petitioner's application for habeas corpus. Petitioner now files a Motion to Amend or Alter Judgment Under Rule 59(e) (#48).

Petitioner elaborates further on her claims regarding the denial of due process and ineffective assistance of counsel. She also provides additional argument regarding the state court's alleged lack of jurisdiction to convict her and her entitlement to an evidentiary hearing. Unfortunately for Petitioner, the arguments she makes in her motion merely elaborate on the basic claims she made in her petition. The Court has considered all of Petitioner's arguments and found them lacking and determined that a dismissal was appropriate. In addition, to the extent Petitioner seeks an extension of time to file an amended habeas corpus petition, her request is denied. As the Court explained in the dismissal order, the time for adding new claims has long passed, and the Court has already considered her additional arguments relating to her original claims.

It is therefore **ORDERED** that Petitioner's Motion to Amend or Alter Judgment Under Rule 59(e) (#48) is **DENIED**.

It is further **ORDERED** that a certificate of appealability is **DENIED**, as reasonable jurists could not debate the dismissal of the petitioner's motion on substantive or procedural grounds, nor find that the issues presented are adequate to deserve encouragement to proceed. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

SIGNED on August 17, 2021



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

United States Court of Appeals
for the Fifth Circuit

No. 21-50889

ROSA SERRANO,

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 Western District of Texas
USDC No. 6:19-CV-414

ON MOTION FOR RECONSIDERATION
AND REHEARING EN BANC

Before ELROD, GRAVES, and HO, *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.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

November 07, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-50889 Serrano v. Lumpkin
USDC No. 6:19-CV-414

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Lisa E. Ferrara

By: _____
Lisa E. Ferrara, Deputy Clerk
504-310-7675

Ms. Rosa Serrano
Mr. Eran Shemuel Sharon