

APPENDIX B

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

March 16, 2023

Mr. Philip Devlin
Western District of Texas, San Antonio
United States District Court
655 E. Cesar E. Chavez Boulevard
Suite G65
San Antonio, TX 78206

No. 22-50522 Moreno v. Lumpkin
USDC No. 5:22-CV-497

Dear Mr. Devlin,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: Mary Frances Yeager, Deputy Clerk
504-310-7686

cc: Mr. Edward Larry Marshall
Mr. Juan A. Moreno

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 22-50522

JUAN A. MORENO,

Petitioner—Appellant,

versus

**BOBBY LUMPKIN, Director, Texas Department of Criminal Justice,
Correctional Institutions Division,**

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Western District of Texas
USDC No. 5:22-CV-497

UNPUBLISHED ORDER

Before KING, JONES, and SMITH, *Circuit Judges.*

PER CURIAM:

Juan A. Moreno, Texas prisoner # 1689833, moves for a certificate of appealability (COA) to appeal the dismissal of his 28 U.S.C. § 2254 application as an unauthorized, successive application. Moreno does not challenge the district court's determinations that his § 2254 application was successive and that he had not obtained authorization from this court as required by 28 U.S.C. § 2244(b)(2); accordingly, he has abandoned any

APPENDIX A

No. 22-50522

challenge to those determinations. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999). Instead, he contends that the district court should have considered the merits of his successive § 2254 application, despite that he had not first obtained § 2244(b)(2) authorization, because he is actually innocent.

To obtain a COA with respect to the denial of a § 2254 application, a prisoner 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). When a district court has denied a request for habeas relief on procedural grounds, the prisoner 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 that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484.

Moreno fails to make the necessary showing. Accordingly, his motions for a COA and leave to proceed in forma pauperis are DENIED. As Moreno fails to make the required showing for a COA on his constitutional claims, we do not reach whether the district court erred by denying an evidentiary hearing. *See United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020).

United States Court of Appeals
for the Fifth Circuit APPENDIX.D.t.c

No. 22-40008

IN RE: JUAN A. MORENO,

United States Court of Appeals
Fifth Circuit

FILED

February 1, 2022

Lyle W. Cayce
Clark

Petitioner.

Petition for a Writ of Mandamus

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

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Petitioner is seeking a writ of mandamus compelling the Texas Court of Criminal Appeals to order him released from custody because his habeas petition has been pending before the court for four and a half years.

“[F]ederal courts have no general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought.” *See Lamar v. 118th Jud. Dist. Ct.*, 440 F.2d 383, 384 (5th Cir. 1971) (per curiam). Accordingly, the petition is DISMISSED for want of jurisdiction.

Petitioner might be able to pursue his claims via a federal habeas petition and to argue that the state court’s years-long delay in acting on his habeas petition constitutes a “circumstance[] . . . that render[s] [the state habeas remedy] ineffective.” 28 U.S.C. 2254(b)(1)(B)(ii); *Burks v. Thaler*, 421 F.

COPY
APPENDIX D

EX PARTE:

IN THE DISTRICT COURT

JUAN A. MORENO

379TH JUDICIAL DISTRICT

APPLICANT

BEXAR COUNTY, TEXAS

The Criminal Appeals WR-79,518-05 Austin Texas 78711

**STATE'S RESPONSE TO APPLICANT'S PETITION
FOR WRIT OF HABEAS CORPUS**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the State of Texas by and through its Criminal District Attorney, Nicholas "Nico" LaHood, and files this response to the Applicant's Petition for Writ of Habeas Corpus.

I. Habeas Writ Filed

The Applicant, Juan A. Moreno filed this petition for a post-conviction writ of habeas corpus pursuant to art. 11.07, § 3(a), Texas Code of Criminal Procedure. The State files this mandatory answer pursuant to art. 11.07 § 3(b).

II. Statement of the Case

The Applicant, as a repeat offender, was convicted of the offense of Traffic of Persons in Cause No. 2009-CR-8626D and punishment was assessed at confinement for LIFE. His petition for a writ of habeas corpus was filed on February 10, 2017. The State was served by the District Clerk of Bexar County on February 16, 2017.

III. State's General Denial

The State generally and specifically denies each and every allegation of fact made by the Applicant and demands strict proof of same.

FILED
DONNA KAY MCKINNEY
DISTRICT CLERK
BEXAR COUNTY

2017 MAR 4 PM 1:50

DRAFT

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the State would ask that the trial court enter an ORDER recommending the relief be denied.

Respectfully submitted,

NICHOLAS "NICO" LAHOOD
Criminal District Attorney
Bexar County, Texas



MATTHEW B. HOWARD
Assistant Criminal District Attorney
Bexar County, Texas
Paul Elizondo Tower
101 W. Nueva
San Antonio, Texas 78205
SBN: 24085860
(210) 335-2736
(210) 335-2436-FAX

Attorneys for the State

CERTIFICATE OF SERVICE

I, Matthew B. Howard, Assistant Criminal District Attorney, Bexar County, Texas, certify that a true and correct copy of the foregoing response will be mailed to Juan A. Moreno, McConnell Unit, 3001 S. Emily Dr., Beeville, TX 78102 on this the 14th day of March, 2017.



MATTHEW B. HOWARD

APPENDIX A

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**

February 22, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-50522 Moreno v. Lumpkin
USDC No. 5:22-CV-497

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: Casey A. Sullivan, Deputy Clerk
504-310-7642

Mr. Philip Devlin
Mr. Edward Larry Marshall
Mr. Juan A. Moreno

United States Court of Appeals
for the Fifth Circuit

No. 22-50522

JUAN A. MORENO,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,
Correctional Institutions Division,*

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Western District of Texas
USDC No. 5:22-CV-497

UNPUBLISHED ORDER

Before KING, JONES, and SMITH, *Circuit Judges.*

PER CURIAM:

Juan A. Moreno, Texas prisoner # 1689833, moves for a certificate of appealability (COA) to appeal the dismissal of his 28 U.S.C. § 2254 application as an unauthorized, successive application. Moreno does not challenge the district court's determinations that his § 2254 application was successive and that he had not obtained authorization from this court as required by 28 U.S.C. § 2244(b)(2); accordingly, he has abandoned any

No. 22-50522

challenge to those determinations. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999). Instead, he contends that the district court should have considered the merits of his successive § 2254 application, despite that he had not first obtained § 2244(b)(2) authorization, because he is actually innocent.

To obtain a COA with respect to the denial of a § 2254 application, a prisoner 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). When a district court has denied a request for habeas relief on procedural grounds, the prisoner 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 that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484.

Moreno fails to make the necessary showing. Accordingly, his motions for a COA and leave to proceed in forma pauperis are DENIED. As Moreno fails to make the required showing for a COA on his constitutional claims, we do not reach whether the district court erred by denying an evidentiary hearing. *See United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020).

United States Court of Appeals

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February 22, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-50522 Moreno v. Lumpkin
USDC No. 5:22-CV-497

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By:
Casey A. Sullivan, Deputy Clerk
504-310-7642

Mr. Philip Devlin
Mr. Edward Larry Marshall
Mr. Juan A. Moreno

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JUAN A. MORENO,
TDCJ No. 01689833,

Petitioner,

v.

Civil No. SA-22-CA-0497-XR

BOBBY LUMPKIN, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

DISMISSAL ORDER

Before the Court is *pro se* Petitioner Juan A. Moreno's petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 (ECF No. 1). In his § 2254 petition, Petitioner seeks to challenge the constitutionality of his December 2010 state court convictions for trafficking of persons, aggravated sexual assault of a child, aggravated kidnaping, and compelling prostitution. *State v. Moreno*, No. 2009CR8626D (379th Dist. Ct., Bexar Cnty., Tex. Dec. 10, 2010). However, Petitioner previously filed an application for writ of habeas corpus challenging these same convictions which the Court denied on March 18, 2015. *See Moreno v. Stephens*, No. 5:15-cv-098-OLG (W.D. Tex.).

Before a second or successive application for writ of habeas corpus may be filed in the district court, 28 U.S.C. § 2244(b)(3) provides an applicant must move in the appropriate court of appeals for an order authorizing the district court to consider the application. Pursuant to § 2244(b), the Court finds this successive application for writ of habeas corpus should be dismissed because Petitioner has not obtained prior approval to file a successive habeas corpus application. *See Burton v. Stewart*, 549 U.S. 147, 152 (2007) (holding the district court lacked

jurisdiction to consider a successive § 2254 petition since petitioner did not obtain authorization from the court of appeals); *In re Campbell*, 750 F.3d 523, 529 (5th Cir. 2014) (petitioner must receive authorization before filing successive habeas petition).

Accordingly, **IT IS HEREBY ORDERED** that:

1. Petitioner Juan A. Moreno's petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 (ECF No. 1) is **DISMISSED WITHOUT PREJUDICE** for want of jurisdiction;
2. Petitioner failed to make "a substantial showing of the denial of a federal right" and cannot make a substantial showing that this Court's procedural rulings are incorrect as required by Fed. R. App. P. 22 for a certificate of appealability. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Therefore, this Court **DENIES** Petitioner a certificate of appealability. *See* Rule 11(a) of the Rules Governing § 2254 Proceedings; and
3. All remaining motions, if any, are **DENIED**, and this case is now **CLOSED**.

It is so **ORDERED**.

SIGNED this 23rd day of May, 2022.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JUAN A. MORENO,
TDCJ No. 01689833,

Petitioner,

v.

BOBBY LUMPKIN, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

Civil No. SA-22-CA-0497-XR

JUDGMENT

The Court has considered the Judgment to be entered in the above-styled and numbered cause.

Pursuant to this Court's Dismissal Order of even date herewith, **IT IS HEREBY ORDERED, ADJUDGED and DECREED** that the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) filed by Petitioner Juan A. Moreno is **DISMISSED WITHOUT PREJUDICE**. No Certificate of Appealability shall issue in this case. This case is now **CLOSED**.

It is so **ORDERED**.

SIGNED this 23rd day of May, 2022.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE