

APPENDIX E

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 12, 2023

No. 23-20265

Lyle W. Cayce
Clerk

ALEX ADAMS,

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 Southern District of Texas
USDC No. 4:21-CV-3920

ORDER:

Alex Adams, Texas prisoner # 01181239, moves this court for a certificate of appealability (COA) to appeal the denial of his postjudgment motions filed in a 28 U.S.C. § 2254 proceeding, in which he sought to challenge his life sentences for capital murder and attempted capital murder. Adams contends that his claims should be considered because he is actually innocent in light of new evidence not submitted to the jury, i.e., DNA testing results not linking him to the crimes; an unidentified alibi witness's statement; a confession by Ernest Bloomfield; and a gun and bullet found in

his leg that were not tested. Adams also contends that he was denied effective assistance of counsel and that his charges should not have been separated into two trials.

Because Adams fails to show that jurists of reason could debate the correctness of the district court's ruling denying his motions, his request for a COA is denied. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). We do not consider Adams's newly raised argument that the district court erred in dismissing his prior § 2254 application as an unauthorized successive application because a dismissal for failure to exhaust state court remedies does not constitute an adjudication on the merits. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018). In light of this recommendation, Adams's motion for a fatal variance is also denied.

We recently denied Adams a COA as to a district court's ruling dismissing a § 2254 application, in which he raised the same claims at issue in the instant appeal, as an unauthorized successive § 2254 application. *See Adams v. Lumpkin*, No. 22-20558 (5th Cir. Jan. 25, 2023) (unpublished). Accordingly, Adams is WARNED that future frivolous, repetitive, or otherwise abusive challenges to his convictions or sentences will subject him to sanctions, including dismissal, monetary sanctions, and restrictions on his ability to file pleadings in this court and any other court subject to this court's jurisdiction.

MOTIONS DENIED; SANCTION WARNING ISSUED.


EDITH BROWN CLEMENT
United States Circuit Judge

ENTERED

May 11, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ALEX ADAMS,
TDCJ #01181239,

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Petitioner,

VS.

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CIVIL ACTION NO. H-21-3920

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BOBBY LUMPKIN,

§

§

Respondent.

§

ORDER

On September 30, 2022, the Court dismissed this petition for a writ of habeas corpus under 28 U.S.C. § 2254 as successive and denied a certificate of appealability. See Doc. No. 13. Alex Adams filed a Notice of Appeal, and the Fifth Circuit subsequently denied his certificate of appealability. See Doc. No. 25.

After the Fifth Circuit denied his certificate of appealability, Adams filed two other motions to set aside the judgment, for an appeal bond, and for a fatal variance. Doc. Nos. 26 & 27. As the Court explained in its prior Order denying Adams's motions to set aside the judgment, nothing in his present motions alters the Court's conclusion that his petition is successive and subject to dismissal on that basis.

Therefore, it is hereby

ORDERED that Adams's pending motions (Doc. Nos. 26 & 27) are **DENIED**; and it is

ORDERED that a certificate of appealability is **DENIED**.

The Clerk shall enter this Order and provide a copy to the parties of record.

SIGNED at Houston, Texas, on this 10th day of May, 2023.



EWING WERLEIN, JR
UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**