

APPENDIX A THRU L

APPENDIX A

REORDER FOR UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT  
DENYING (COA) MOTION

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

June 14, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-40099 Pedraza v. Lumpkin  
USDC No. 5:22-CV-60

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

*Dantrell L. Johnson*

By:

Dantrell L. Johnson, Deputy Clerk  
504-310-7689

Mr. Edward Larry Marshall  
Mr. Timothy Ricardo Pedraza

# United States Court of Appeals for the Fifth Circuit

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United States Court of Appeals  
Fifth Circuit

No. 23-40099

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**FILED**

June 14, 2023

Lyle W. Cayce  
Clerk

TIMOTHY RICARDO PEDRAZA,

*Petitioner—Appellant,*

*versus*

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

*Respondent—Appellee.*

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Application for Certificate of Appealability  
the United States District Court  
for the Southern District of Texas  
USDC No. 5:22-CV-60

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## ORDER:

Timothy Ricardo Pedraza, Texas prisoner # 1453490, seeks a certificate of appealability (COA) to appeal the district court's denial and dismissal of his 28 U.S.C. § 2254 application. He contends that his due process rights were violated when he was denied parole after he became eligible under Texas law for release.

To obtain a COA, Pedraza 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). An applicant must show "that reasonable jurists

would find the district court's assessment of the constitutional claims debatable or wrong." *Slack*, 529 U.S. at 484. Pedraza has not made the requisite showing. Accordingly, his COA motion is DENIED. Pedraza's motion for leave to proceed in forma pauperis on appeal is likewise DENIED.



EDITH BROWN CLEMENT  
*United States Circuit Judge*

APPENDIX B

ORDER OF UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS DENYING § 2254 PETITION

Appendix "B"

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

TIMOTHY RICARDO PEDRAZA, §  
Petitioner, §  
VS. § CIVIL ACTION NO. 5:22-CV-60  
BOBBY LUMPKIN, *TDCJ-CID* §  
*Director,* §  
Respondent. §

**ORDER**

Before the Court is Pedraza's 28 U.S.C. § 2254 petition for habeas relief (Dkt. No. 1). For the reasons below, his § 2254 petition (Dkt. No. 1) is **DENIED**. A certificate of appealability is also **DENIED**.

**I. BACKGROUND**

In 2006, a Texas state court convicted Pedraza of murder and sentenced him to 25 years' imprisonment (Dkt. No. 1). The state Board of Pardons and Paroles (BPP) denied Pedraza's parole application twice: once in 2017 and again in 2020 (Dkt. No. 1-11). Pedraza then applied for a state writ of habeas corpus in the 406th Judicial District Court of Webb County, Texas, which was denied (Dkt. Nos. 1-2, 1-4). Pedraza appealed, and the Texas Court of Criminal Appeals denied Pedraza's application without a written order (Dkt. No. 1-6).

## II. DISCUSSION

Having reviewed Pedraza's motion, the Court concludes that Pedraza is not entitled to postconviction relief. Because the Court further concludes that Pedraza has not "made a substantial showing of the denial of a constitutional right," it declines to issue a certificate of appealability. 28 U.S.C. § 2253.

### **A. Pedraza Is Not Entitled to Relief Under § 2254.**

Pedraza argues the following: Because he has served over half his sentence without considering good time conduct, Texas Government Code § 508.145(d) mandates his parole eligibility (Dkt. Nos. 1, 1-2). On this premise, Pedraza argues he had a "liberty interest" in his parole, and his due process rights were violated when BPP denied his parole application (*id.*). Pedraza misunderstands § 508.145(d). That provision states:

[A]n inmate who is serving a sentence for . . . an offense described by Article 42A.054(a), Code of Criminal Procedure . . . *is not eligible* for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less . . .

Tex. Gov't Code Ann. § 508.145(d) (emphasis added).

Although Pedraza may be *eligible* for parole under § 508.145(d), he is not *entitled* to it. A convicted person has no constitutional right "to be conditionally released before the expiration of a valid sentence." *Bass v. Hall*, 692 F. App'x 207, 208 (5th Cir. 2017) (quoting *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979)). Additionally, "[a] state prisoner's liberty interest in parole is defined by state statute." *Id.* Texas law creates no liberty interest in parole. *Stout v. Stephens*, 856 F. App'x 558, 559 (5th Cir. 2021). Therefore, Pedraza has "no constitutional

expectation of parole and no constitutionally protected liberty interest in obtaining parole.” *James v. Davis*, No. 2:20-cv-40, 2020 WL 2583117, at \*1 (S.D. Tex. Apr. 6, 2020), *R. & R. adopted*, 2020 WL 2576240 (S.D. Tex. May 21, 2020).

Pedraza’s due process rights were not violated when BPP denied him parole. Nor were they violated when the Texas trial court and Texas Court of Criminal Appeals denied his state writ of habeas corpus. Because Pedraza cannot show a constitutional violation, he is not entitled to relief under § 2254.

#### **B. A Certificate of Appealability Will Not Issue.**

A final order in a § 2254 proceeding may be appealed to the court of appeals only if a “circuit justice or judge issues a certificate of appealability.” 28 U.S.C. § 2253(c)(1). District courts can *sua sponte* grant or deny a certificate of appealability before a notice of appeal is filed. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000).

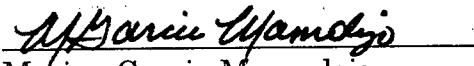
A certificate of appealability may only issue if a petitioner “has made a substantial showing of a constitutional violation.” 28 U.S.C. § 2253(c)(2). If a district court rejects a constitutional claim on the merits, the petitioner must demonstrate that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). Here, reasonable jurists could not debate that Pedraza’s constitutional claims lack merit and do not “deserve encouragement to proceed further.” *Id.* (quoting *Barefoot v. Estelle*, 463 U.S. 880, 894 (1983)). Accordingly, a certificate of appealability is **DENIED**.

### III. CONCLUSION

For the foregoing reasons, Pedraza's § 2254 petition (Dkt. No. 1) and a certificate of appealability are **DENIED**. The Court will enter final judgment under separate cover.

It is so **ORDERED**.

SIGNED January 11, 2023.

  
\_\_\_\_\_  
Marina Garcia Marmolejo  
United States District Judge

TRUE COPY I CERTIFY  
ATTEST: January 11, 2023  
NATHAN OCHSNER, Clerk of Court  
By: s/ Della M. Gonzalez  
\_\_\_\_\_  
Della M. Gonzalez  
Deputy Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

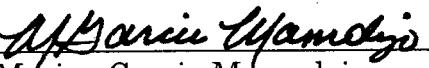
TIMOTHY RICARDO PEDRAZA, §  
§  
Petitioner, § CIVIL ACTION NO. 5:22-CV-60  
VS. §  
§  
BOBBY LUMPKIN, *TDCJ-CID* §  
*Director,* §  
§  
Respondent. §

**FINAL JUDGMENT**

Because the Court has denied Pedraza's 28 U.S.C. § 2254 motion for postconviction relief and a certificate of appealability, final judgment is hereby **ENTERED**. Pedraza's claims are **DISMISSED WITH PREJUDICE**, and the Clerk of Court is **DIRECTED** to close this civil action.

It is so **ORDERED**.

SIGNED January 11, 2023.

  
Marina Garcia Marmolejo  
United States District Judge

APPENDIX C

ORDER OF UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS DENYING (IFP)

Appendix "C"

**ENTERED**

March 07, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

TIMOTHY RICARDO PEDRAZA,

§

Petitioner,

§

VS.

CIVIL ACTION NO. 5:22-CV-60

BOBBY LUMPKIN, *TDCJ-CID*  
*Director,*

§

Respondent.

§

**ORDER**

For the reasons below, Petitioner Timothy Ricardo Pedraza's application to proceed *in forma pauperis* (IFP) on appeal (Dkt. No. 6) is **DENIED**.

**I. BACKGROUND**

In 2022, Pedraza filed a 28 U.S.C. § 2254 motion for postconviction relief (Dkt. No. 1). Therein, he argued Texas law entitled him to release on parole (*id.*). He also claimed his parole denial and continued imprisonment violated his constitutional due process rights (*id.*). The Court rejected these arguments (Dkt. No. 2). It explained that under Texas law, Pedraza was *eligible* for release on parole, but he was not *entitled* to it (*id.* at 2). The Court also found no constitutional violation (*id.*). It denied Pedraza's § 2254 motion and a certificate of appealability (*id.* at 3). Pedraza then filed a notice of appeal and the instant application to proceed IFP on appeal (Dkt. Nos. 5, 6).

## II. LEGAL STANDARD

To appeal a civil judgment IFP, prisoners must satisfy the requirements in 28 U.S.C. § 1915(a) and Federal Rule of Appellate Procedure 24(a). *See Dominguez v. Catoe*, No. 22-40460, 2023 WL 534779, at \*1 (5th Cir. Jan. 27, 2023). These provisions require, *inter alia*, an affidavit of indigency and a certified copy of the prisoner's inmate trust fund account. *See* 28 U.S.C. § 1915(a)(1)–(2); Fed. R. App. P. 24(a)(1). Section 1915(a) further provides, “An appeal may not be taken [IFP] if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). An appeal is not taken in good faith unless it presents a nonfrivolous appellate issue. *Dominguez*, 2023 WL 534779, at \*1. Legal points that are arguable on their merits are nonfrivolous. *See United States v. Moore*, 858 F. App'x 172, 172 (5th Cir. 2021).

## III. DISCUSSION

Because Pedraza's inmate trust fund account only has \$4.28, the Court finds he is indigent (Dkt. No. 6 at 3). However, his appeal has not been taken in good faith. As the Court previously explained, Pedraza has no constitutional right “to be conditionally released before the expiration of a valid sentence” (Dkt. No. 2 at 2 (citing *Bass v. Hall*, 692 F. App'x 207, 208 (5th Cir. 2017)). Nor does Pedraza have a liberty interest in his release on parole (*id.* (citing *Stout v. Stephens*, 856 F. App'x 558, 559 (5th Cir. 2021))). Because reasonable jurists would not find the Court's assessment as “debatable or wrong,” the Court denied a certificate of appealability (*id.* at 3). For those same reasons, Pedraza's appeal fails to present a legal point that is arguable on its merits and is nonfrivolous. Accordingly, the Court cannot say Pedraza's appeal

is taken in good faith.

#### IV. CONCLUSION

For the foregoing reasons, Petitioner's application to proceed IFP on appeal (Dkt. No. 6) is **DENIED**.

It is so **ORDERED**.

SIGNED March 7, 2023.

  
\_\_\_\_\_  
Marina Garcia Marmolejo  
United States District Judge