APPENDIX A

ORDER DENIAL COA

CAUSE IN. 23-10037

United States Court of Appeals for the Fifth Circuit

No. 23-10037

United States Court of Appeals
Fifth Circuit
FILED
June 20, 2023
Lyle W. Cayce
Clerk

JOHN EDWARD HALL,

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 Northern District of Texas
USDC No. 3:16-CV-725

UNPUBLISHED ORDER

Before HAYNES, ENGELHARDT, and OLDHAM, *Circuit Judges*.

PER CURIAM:

John Edward Hall, Texas prisoner # 1608233, moves for a certificate of appealability (COA) to appeal the denial of his Federal Rule of Civil Procedure 60(b) motion seeking relief from the denial of his 28 U.S.C. § 2254 application; the district court denied with prejudice as procedurally barred Hall's § 2254 claims that his trial counsel rendered ineffective assistance.

Hall asserts that he is entitled to Rule 60(b) relief based on state habeas orders subsequently issued by the Texas Court of Criminal Appeals.

To obtain a COA, Hall must show that jurists of reason could debate whether the district court abused its discretion by denying his Rule 60(b) motion. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Hernandez v. Thaler*, 630 F.3d 420, 428 (5th Cir. 2011). He fails to make the necessary showing. Accordingly, his motions for a COA and for leave to proceed in forma pauperis are DENIED. As Hall 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).

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APPENDIX B

DENIAL OF RULE 60(b)(4)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN EDWARD HALL, #1608233, Petitioner,	§	
v.	§	No. 3:16-cv-00725-G-BT
LORIE DAVIS, DIRECTOR TDCJ-CID, Respondent.	§	

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court is a motion by John Edward Hall to proceed *in forma pauperis* on appeal (ECF No. 41). For the following reasons, the District Court should deny Hall's motion.

I.

To proceed *in forma pauperis* on appeal, an appellant must show financial eligibility and a nonfrivolous issue for appeal. *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). Under Federal Rule of Appellate Procedure 24(a)(3)(A), an appellant is ineligible for *in forma pauperis* status if the court certifies that the appeal is not taken in good faith. "Good faith" means that the issues on appeal are not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). When the underlying claims are "entirely frivolous and had no possibility of success," the appeal is not taken in good faith. *Baugh v. Taylor*, 117 F.3d 197, 201-02 (5th Cir. 1997). The determination of whether

good faith exists "is limited to whether the appeal involves legal points arguable on the merits (and therefore not frivolous)." *United States v. Moore*, 858 F. App'x 172, 172 (5th Cir. 2021) (per curiam) (quoting *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted)). A district court has discretion in deciding whether to grant or deny a request to proceed *in forma pauperis*. *Williams v. Estelle*, 681 F.2d 946, 947 (5th Cir. 1982) (per curiam) (citing *Green v. Estelle*, 649 F.2d 298, 302 (5th Cir. 1981)).

II.

Hall initiated this action by filing a petition for writ of habeas corpus under 28 U.S.C. § 2254. (ECF No. 3.) Hall raised three arguments, and the magistrate judge recommended the petition be denied with prejudice for failure to make a substantial showing of the denial of a federal right. FCR (ECF No. 17). Hall did not file any objections. On June 27, 2017, the District Court accepted the recommendation, denied a certificate of appealability (COA), and entered judgment. Ord. (ECF No. 21); J. (ECF No. 22).

On August 1, 2022, Hall filed a motion under Federal Rule of Civil Procedure 60(b). (ECF No. 34.) The magistrate judge found Hall's claims were frivolous and lacked merit and recommended the Rule 60(b) motion be denied. FCR (ECF No. 35). Hall filed objections. (ECF No. 36.) On December 21, 2022, the District Court overruled Hall's objections, accepted

the magistrate judge's recommendation, and denied a COA. Ord. (ECF No. 38).

At that time, the District Court found Hall failed to show that "reasonable jurists would find this Court's 'assessment of the constitutional claims debatable or wrong,'" "reasonable jurists would find 'it debatable whether the petition state[d] a valid claim of the denial of a constitutional right,'" or "debatable whether [this Court] was correct in its procedural ruling." *Id.* at 2 (quoting *Slack v. Daniel*, 529 U.S. 473, 484 (2000)).

On January 4, 2023, Hall filed a notice of appeal, seeking to challenge the District Court's December 21, 2022 decision to deny his Rule 60(b) motion. (ECF No. 38.) As noted, the District Court previously concluded Hall's Rule 60(b) claims were frivolous and lacked merit. The District Court also concluded Hall failed to demonstrate there was any mistake in the judgment or any other reason to grant relief from the judgment. Finally, the District Court denied a COA. For the same reasons, Hall's current appeal presents no legal point of arguable merit, and it would be frivolous. *See Howard*, 707 F.2d at 220.

III.

The District Court should find Hall's appeal is not taken in good faith and DENY his motion for leave to proceed *in forma pauperis* on appeal.

If the District Court denies Hall's request to proceed *in forma pauperis* on appeal, he may challenge that finding by filing a separate

motion to proceed *in forma pauperis* on appeal with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit within 30 days from the date of this order. *See* Baugh, 117 F.3d at 202; *see also* Fed. R. App. P. 24(a)(5).

Signed January 13, 2023.

REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). To be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996), *modified by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections to 14 days).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN EDWARD HALL,	)	
	)	
Petitioner,	)	
	)	CIVIL ACTION NO.
VS.	)	
	)	3:16-CV-0725-G-BT
LORIE DAVIS, DIRECTOR TDCJ-CID,	)	
	)	
Respondent.	)	

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

On August 2, 2021, the United States Magistrate Judge made Findings, Conclusions, and Recommendation in this case. No objections were filed. After making an independent review of the pleadings, files and records in this case, and the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, the court finds that the Findings, Conclusions, and Recommendation of the Magistrate Judge are correct, and they are accepted as the Findings, Conclusions, and Recommendation of the court.

SO ORDERED.

August 23, 2021.

A. Joe Fish

A. JOE FISH
Senior United States District Judge

App. B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN EDWARD HALL, Petitioner,	§	
v.	§	No. 3:16-cv-0725-G (BT)
LORI DAVIS DIRECTOR, TDCJ-CID, Respondent.	§	

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

John Edward Hall, a Texas prisoner, filed a *pro se* motion to file a second or successive petition pursuant to 28 U.S.C. § §§ 2244 and 2254. (ECF No. 27.) The District Court referred the motion to the United States magistrate judge for findings and a recommendation, pursuant to 28 U.S.C. § 636(b) and a standing order of reference. For the following reasons, the District Court should DISMISS Hall's motion.

I.

On March 9, 2016, Hall filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. The United States magistrate judge entered findings and conclusions, recommending that Hall's petition be denied with prejudice for failure to make a substantial showing of the denial of a federal right. On June 27, 2017, the District Court denied the petition with prejudice, entered judgment, and denied Hall a certificate of appealability.

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Almost four years later, on June 18, 2021, the Court received Hall's motion to file a second or successive petition pursuant to 28 U.S.C. § §§ 2244 and 2254. In it, he argues:

> (1) his trial attorney deprived him of access to the court by failing to turn over his case files when requested;
>
> (2) the habeas corpus court violated his constitutional right to due process and access to the court and abused its discretion under a presumption of correctness;
>
> (3) his trial attorney failed to attack the indictment and object to the jury charge;
>
> (4) his trial attorney provided ineffective assistance of counsel by failing to investigate and pursue affirmative defenses and the lesser offense of manslaughter;
>
> (5) his trial attorney failed to challenge the prior conviction used to enhance his conviction and failed to communicate any plea bargains; and
>
> (6) his appellate attorney provided ineffective assistance of counsel by failing to comply with his request to turn over his case files and pursue manslaughter.

II.

"[The Anti-Terrorism and Effective Death Penalty Act (AEDPA)] requires a prisoner to obtain authorization from the federal appellate court in his circuit before he may file 'a second or successive' petition for relief in the federal district court. Without such authorization, the otherwise-cognizant district court has no jurisdiction to entertain a successive § 2254 petition." *Leal Garcia v. Quarterman*, 573 F.3d 214, 219 (5th Cir. 2009) (footnotes omitted); *accord* 28 U.S.C. § 2244(b)(3)(A); *see also Montgomery v. Goodwin*, 841 F. App'x 700, 703 (5th Cir.

2021); *Nowland v. Director*, 2021 WL 2653529, at *2 (N.D. Tex. May 25, 2021). "Indeed, the purpose of [28 U.S.C. § 2244(b)(3)(A)] was to eliminate the need for the district courts to repeatedly consider challenges to the same conviction unless an appellate panel first found that those challenges had some merit." *United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000) (per curiam) (citing *In re Cain*, 137 F.3d 234, 235 (5th Cir. 1988)). A § 2254 petition is not second or successive just because it follows an earlier petition. *Cain*, 137 F.3d at 235; *see also Adams v. Thaler*, 679 F.3d 312, 322 (5th Cir. 2012). Rather, a later petition is successive when it: "(1) raises a claim challenging the petitioner's conviction or sentence that was or could have been raised in an earlier petition; or (2) otherwise constitutes an abuse of the writ." *Cain*, 137 F.3d at 235. "[A]n application filed after a previous application was fully adjudicated on the merits is a second or successive application within the meaning of 28 U.S.C. § 2244(b), even if it contains claims never before raised." *Graham v. Johnson*, 168 F.3d 762, 773 n.7 (5th Cir. 1999) (citing *Felker v. Turpin*, 518 U.S. 651, 655-58, 662-63 (1996)). A petitioner seeking authorization to file a second or successive petition must seek that authorization from the Fifth Circuit. *See* 28 U.S.C. § 2244(b)(3)(A).

Here, this Court adjudicated Hall's first § 2254 petition on the merits on June 27, 2017. The claims Hall seeks to bring in a second or successive § 2254 petition could have been brought in his first § 2254 petition, and he now seeks authorization from this Court to file a second or successive petition. However, Hall has already exercised his "one fair opportunity to seek federal habeas relief from

his conviction." *See Banister v. Davis*, 140 S. Ct. 1698, 1702 (2020). Therefore, Hall's request to file a second or successive § 2254 petition from this Court is misplaced, and he must seek authorization from the Fifth Circuit Court of Appeals. Because this Court lacks jurisdiction over Hall's motion, the Court should dismiss it.

III.

For the foregoing reasons, the Court should DISMISS Hall's motion without prejudice to his right to file a motion for authorization to file a second or successive application in the Fifth Circuit Court of Appeals.

For statistical purposes, the Clerk of Court is directed to open and close a case under 28 U.S.C. § 2254 (Nature of Suit 530) directly assigned to the same Magistrate Judge and District Judge.

Signed August 2, 2021.

REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

APPENDIX C

ORDER OF DENIAL OF

(SOS) IN CAUSE NO. 21-10899

United States Court of Appeals for the Fifth Circuit

No. 21-10899

IN RE: JOHN EDWARD HALL,

Movant.

Motion for an Order Authorizing
the United States District Court
for the Northern District of Texas
to Consider a Successive 28 U.S.C. § 2254 Application

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges*.

PER CURIAM:

John Hall, Texas prisoner #1608233, was convicted of murder and was sentenced to a 70-year term of imprisonment. He moves for authorization to file a successive 28 U.S.C. § 2254 application. He seeks to raise the following claims: He was denied fair and impartial hearings; the state and federal habeas corpus courts were defective; he was denied access to courts; his trial and appellate counsel provided ineffective assistance; and his right to be protected from unreasonable searches and seizures was violated.

To the extent that Hall argues that his proposed § 2254 application is not successive on account of the most recent order from the state habeas court, which modified the disposition of his second and third state habeas applications, the argument is unavailing. Hall remains in custody per the original judgment of conviction and sentence, and his proposed § 2254

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application challenges the same judgment that was the subject of his first § 2254 application; it is therefore successive. *See In re Lampton*, 667 F.3d 585, 588–89 (5th Cir. 2012). To the extent that Hall seeks to raise claims that were urged in his prior § 2254 application, we do not consider them. *See* 28 U.S.C. § 2244(b)(1).

As for his remaining claims, Hall has not asserted that they rely on a new rule of constitutional law that the Supreme Court has made retroactive to cases on collateral review. *See* § 2244(b)(2)(A). Additionally, he has not put forward a newly discovered factual predicate that, if proven and viewed in light of all the evidence, would establish, by clear and convincing evidence, that no reasonable factfinder would have found him guilty absent constitutional error. *See* § 2244(b)(2)(B). Accordingly, he has not made the required *prima facie* showing for authorization to file a successive § 2254 application. *See* § 2244(b)(2), (3)(C).

IT IS ORDERED that Hall's motion for authorization to file a successive § 2254 application is DENIED.

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APPENDIX D

ORDER DENIAC OF 2254

PETITION IN CAUSE NO. 3:16-CV-725-G

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN EDWARD HALL, Petitioner, VS. LORIE DAVIS, Director, Texas Department of Criminal Justice, Correctional Institutions Division, Respondent.	)	CIVIL ACTION NO. 3:16-CV-0725-G (BF)

ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE, AND DENYING A CERTIFICATE OF APPEALABILITY

The United States Magistrate Judge made findings, conclusions and a recommendation in this case. No objections were filed. The district court reviewed the proposed findings, conclusions and recommendation for plain error. Finding none, the court **ACCEPTS** the findings, conclusions and recommendation of the United States Magistrate Judge.

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings,

APPX. D

In the event, the petitioner will file a notice of appeal, the court notes that

(X) the petitioner will proceed *in forma pauperis* on appeal.

( ) the petitioner will need to pay the $505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

SO ORDERED.

June 27, 2017.

A. JOE FISH
Senior United States District Judge

*(...continued)

appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

APPX. D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN EDWARD HALL, Petitioner, VS. LORIE DAVIS, Director, Texas Department of Criminal Justice, Correctional Institutions Division, Respondent.	)	CIVIL ACTION NO. 3:16-CV-0725-G (BF)

JUDGMENT

The court has entered its order accepting the findings, conclusions and recommendation of the United States Magistrate Judge in this case.

It is therefore **ORDERED, ADJUDGED** and **DECREED** that the petition to vacate, set-aside, or correct sentence pursuant to 28 U.S.C. § 2254 is **DENIED**.

The clerk shall transmit a true copy of this judgment, together with a true copy of the order accepting the findings, conclusions and recommendation of the United States Magistrate Judge, to the parties.

June 27, 2017.

A. Joe Fish

A. JOE FISH
Senior United States District Judge

APPX. D

APPENDIX E

MAGISTRATE REPORT AND RECOMMENDATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN EDWARD HALL, **Petitioner,**	)	
v.	)	**No. 3:16-CV-725-G**
LORIE DAVIS, Director, TDCJ-CID, **Respondent.**	)	

FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

This cause of action was referred to the United States Magistrate Judge pursuant to the provisions of Title 28, United States Code, Section 636(b), as implemented by an order of the United States District Court for the Northern District of Texas. The Findings, Conclusions and Recommendation of the United States Magistrate Judge follow.

I. Procedural Background

Petitioner filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He challenges his conviction for murder, enhanced. *State of Texas v. John Edward Hall*, No. F08-63139-W (363rd Dist. Ct., Dallas County, Tex., Oct. 29, 2009). Petitioner was sentenced to seventy years in prison. On April 11, 2011, the Fifth District Court of Appeals affirmed Petitioner's conviction and sentence. *Hall v. State*, No. 05-09-01368-CR, 2011 WL 1348635 (Tex. App. – Dallas, 2011, pet. ref'd).

On September 2, 2014, filed a state habeas petition requesting permission to file an out-of-time petition for discretionary appeal (PDR). *Ex parte Hall*, No. 82,314-01. On November

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19, 2014, the Court of Criminal Appeals granted Petitioner leave to file an out-of-time PDR. On April 22, 2015, the Court of Criminal Appeals refused the PDR.

On February 27, 2015, Petitioner filed a second state habeas petition. *Ex parte Hall*, No. 82,314-02. On June 24, 2015, the Court of Criminal Appeals denied the petition without written order. On December 3, 2015, Petitioner filed a third state habeas petition. *Ex parte Hall*, No. 82,314-03. On February 3, 2016, the Court of Criminal Appeals dismissed the petition as successive.

On March 9, 2016, Petitioner filed the instant § 2254 petition. He argues:

1. His third state habeas proceeding was inadequate because he was denied a hearing;
2. He received ineffective assistance of counsel when counsel failed to request a lesser-included offense instruction; and
3. He received ineffective assistance of counsel when counsel failed to properly investigate and call witnesses, and failed to request an impeachment instruction.

On June 28, 2016, Respondent filed her answer. On August 2, 2015, Petitioner filed a reply. The Court finds the petition should be denied.

II. Discussion

1. Standard of Review

The pertinent terms of the Antiterrorism and Effective Death Penalty Act of 1996 (the AEDPA), 28 U.S.C. § 2254 provide:

> (d) An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

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(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in a State court proceeding.

See 28 U.S.C. § 2254(d). Under the "contrary to" clause, a federal habeas court may grant the writ of habeas corpus if the state court arrives at a conclusion opposite to that reached by the United States Supreme Court on a question of law or if the state court decides a case differently from the United States Supreme Court on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 380-84 (2000). Under the "unreasonable application" clause, a federal court may grant a writ of habeas corpus if the state court identifies the correct governing legal principle from the United States Supreme Court's decisions, but unreasonably applies that principle to the facts of the prisoner's case. *Id.*

2. Procedural Bar

Respondent argues that Petitioner's ineffective assistance of counsel claims, (Claims 2 and 3), are procedurally barred because these claims were dismissed in a successive state habeas petition as procedurally barred.

Federal courts may not review a state court decision that rests on an adequate and independent state procedural default, unless the habeas petitioner shows cause for the default and "prejudice attributable thereto" or demonstrates that the failure to consider the federal claim will result in a "fundamental miscarriage of justice." *Harris v. Reed*, 489 U.S. 255, 262 (1989). When the last state court to review a claim clearly and expressly states that its judgment rests on a procedural bar, the procedural default doctrine generally bars federal review. *Id*; *Lowe v. Scott*, 48 F.3d 873, 875 (5th Cir. 1995).

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In this case, Petitioner raised his ineffective assistance of counsel claims in his third state habeas petition. The Court of Criminal Appeals dismissed the third habeas petition as successive to Petitioner's second habeas petition. The state habeas court found the claims procedurally barred because Petitioner was prohibited from raising claims in his third habeas petition that could have been raised in his second habeas petition. *Ex parte Gladney* at 99-100 (citing *Ex parte Cruzata*, 220 S.W.3d 518, 520 (Tex. Crim. App. 2007)).

To overcome the procedural bar, a petitioner must demonstrate: (1) cause for the procedural default and actual prejudice as a result of the alleged violation of federal law; or (2) that failure to consider the claims will result in a "fundamental miscarriage of justice." *Pitts v. Anderson*, 122 F.3d 275, 279 (5th Cir. 1997) (citing *Coleman*, 501 U.S. at 750). Petitioner has shown no cause for his failure to present these claims to the Texas Court of Criminal Appeals.

Petitioner argues his claims should not procedurally barred because the Court of Criminal Appeals should not have considered his second state habeas on the merits because his PDR was still pending at the time. Petitioner's argument, however, does not state why he did not file his ineffective assistance of counsel claims in his second state habeas petition which was considered on the merits. The Court of Criminal Appeals determined that Petitioner's third habeas petition was successive because of Petitioner's failure to raise his claims in his second habeas petition, when he could have done so. Petitioner has failed to show cause for his failure to raise his ineffective assistance of counsel claims in his second state habeas petition.

Petitioner has also failed to demonstrate the need to prevent a miscarriage of justice. This exception is "confined to cases of actual innocence, 'where the petitioner shows, as a factual matter, that he did not commit the crime of conviction.'" *Fairman v. Anderson*, 188 F.3d 635,

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644 (5th Cir. 1999) (quoting *Ward v. Cain*, 53 F.3d 106, 108 (5th Cir. 1995)). To establish the required probability that he was actually innocent, a petitioner must support his allegations with new, reliable evidence that was not presented at trial and must show it was more likely than not that no reasonable juror would have convicted him in light of the new evidence. *Id.* (citing *Schlup*, 513 U.S. at 327). Petitioner has presented no new, reliable evidence showing that it was more likely than not that no reasonable juror would have convicted him. Petitioner has not overcome the state procedural bar. Accordingly, the procedural default doctrine bars federal habeas relief on these claims.

3. State Hearing

Petitioner argues the state habeas proceeding was inadequate when the court failed to hold a hearing on his third state habeas petition. Petitioner's claims regarding the state habeas process do not state a claim for federal habeas relief. *See Rudd v. Johnson*, 256 F.3d 317, 319-20 (5th Cir. 2001) ("infirmities in the state habeas process do no constitute grounds for relief in federal court"). Petitioner's claim should be denied.

4. Summary

Petitioner is lawfully restrained because he has failed to prove that he has been denied a constitutionally protected interest. Accordingly, the state courts' decision to deny relief is not contrary to or does not involve an unreasonable application of clearly established federal law and is not based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings.

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III. Recommendation

For the foregoing reasons, the Court recommends that Petitioner's habeas corpus petition pursuant to 28 U.S.C. § 2254 be denied with prejudice for failure to make a substantial showing of the denial of a federal right.

Signed this 10th day of May, 2017.

PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

APX. E

APPENDIX E

ORDER OF TCCA GRANTING
MOTION FOR RECONSIDERATION

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-82,314-02 AND WR-82,314-03

EX PARTE JOHN EDWARD HALL, Applicant

**ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. W08-63139-W(B) AND (C) IN THE 363RD DISTRICT COURT
FROM DALLAS COUNTY**

Per curiam.

ORDER

Applicant was convicted of murder and sentenced to seventy years' imprisonment. The Fifth Court of Appeals affirmed his conviction. *Hall v. State*, No. 05-09-01368-CR (Tex. App. — Dallas April 11, 2011) (not designated for publication). Applicant has filed three applications for writs of habeas corpus in the county of conviction, and the district clerk forwarded them to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

The appellate mandate in Applicant's case originally issued on June 23, 2011. On September 9, 2014, Applicant filed his first application for writ of habeas corpus in the district court. This Court received that application, in which Applicant sought an out-of-time petition for discretionary review, on October 20, 2014. On February 3, 2016, this Court granted relief pursuant to the -01 application in the form of an out-of-time petition for discretionary review. Applicant filed a petition

Appendix F (1)

Court of Criminal Appeals

Docket Sheet
Case Number: WR-82,314-02
Date Filed: 05/11/2015 9:24AM

Style: Applicant HALL, JOHN EDWARD

Original Proceeding: No

Case Description: 11.07 HC

Punishment: 70 YEARS BondAmount: In Jail: False

Trial Court Information

County	Court Name	Case #	Judge	Court Reporter
Dallas	363rd District Court	W08-63139-W (B)		

COA Information

COA Case Number	Published Cite	COAJudge	Disposition Code
05-09-01368-CR			

Events and Opinions

Event Date	Stage	Event	Event Description	Disposition	Grouping	Order Type	Submission
07/22/2020	RECONSIDERATION GRANTED	ORDER ISSUED	WRIT	DISMISS/ORD		HC DISMISSED - W ORDER	
		Opinion Type	Author				
		Order	PerCuriam				
07/20/2020	RECONSIDERATION GRANTED	RECONSIDERATION GRANTED	WRIT				
07/20/2020	MOTION FOR RECONSIDERATION REC	MOT RECON DISP	COURT	GRANTED			
07/09/2020	MOTION FOR RECONSIDERATION REC	MOT RECON FILED	COURT				
06/24/2015	HABEAS CORPUS REC - 1107-HC	ACTION TAKEN	WRIT	HCRDEN		HC DENIED W/O ORDER	
05/19/2015	HABEAS CORPUS REC - 1107-HC	WRIT SUBMITTED					
05/11/2015	HABEAS CORPUS REC - 1107-HC	WRIT RECEIVED	WRIT				

Set Date	Calendar Name	Reason Set
07/22/2020	STORED	WRIT STORED

APP. F
(EXH. 3)

Court of Criminal Appeals

Docket Sheet
Case Number: WR-82,314-03
Date Filed: 01/19/2016 2:25PM

Style: Applicant HALL, JOHN EDWARD AKA HALL, JOHN E

Original Proceeding: No

Case Description: 11.07 HC

Punishment: 70 YRS BondAmount: In Jail: False

Trial Court Information

County	Court Name	Case #	Judge	Court Reporter
Dallas	363rd District Court	W08-63139-W(C)		

COA Information

COA Case Number	Published Cite	COAJudge	Disposition Code
05-09-01368-CR			

Events and Opinions

Event Date	Stage	Event	Event Description	Disposition	Grouping	Order Type	Submission
12/30/2020	HABEAS CORPUS REC - 1107-HC	MOTION DISP	WRIT	DENIED			
12/28/2020	HABEAS CORPUS REC - 1107-HC	MOTION RECEIVED	PRO SE				
07/22/2020	RECONSIDERATION GRANTED	ORDER ISSUED	WRIT	DISMISS/ORD		HC DISMISSED - W ORDER	
		Opinion Type	Author				
		Order	PerCuriam				
07/20/2020	RECONSIDERATION GRANTED	RECONSIDERATION GRANTED	WRIT				
07/20/2020	MOTION FOR RECONSIDERATION REC	MOT RECON DISP	COURT	GRANTED			
07/20/2020	MOTION FOR RECONSIDERATION REC	MOT RECON FILED	COURT				
05/29/2020	MOTION FOR RECONSIDERATION REC	MOT FOR RECON RECD	PRO SE				
02/15/2019	HABEAS CORPUS REC - 1107-HC	COPY REQUEST	PRO SE				
02/10/2016	HABEAS CORPUS REC - 1107-HC	MISC DOCUMENT RECD	PRO SE				
02/03/2016	HABEAS CORPUS REC - 1107-HC	ACTION TAKEN	WRIT	DIS/SUBAPP		HC DISMISSED - 1107 -4	
01/25/2016	HABEAS CORPUS REC - 1107-HC	WRIT SUBMITTED					
01/19/2016	HABEAS CORPUS REC - 1107-HC	WRIT RECEIVED	WRIT				

APP. F
(EXH. 4)

IN THE 363RD JUDICIAL DISTRICT COURT

OF DALLAS COUNTY, TEXAS

THE STATE OF TEXAS :

VS. : CAUSE NO. F08-63139-W

JOHN EDWARD HALL :

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, John Edward Hall, stands charged by indictment with the offense of murder, alleged to have been committed in the County of Dallas and the State of Texas on or about 17th day of November, 2008.

To this charge the defendant has pleaded not guilty.

Our law provides that a person commits murder if he intentionally or knowingly causes the death of an individual.

"Individual" means a human being who has been born and is alive.

"Deadly weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

A person acts intentionally, or with intent, with respect to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

EXH. C

A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

You are instructed that a witness may be impeached by showing that he has previously been convicted of a felony offense or a crime involving moral turpitude. Such impeachment evidence may be considered by you to aid you in determining (if it does so) the weight, if any, to be given the testimony of the witness at trial and his credibility.

You are instructed that certain evidence was admitted in before you in regard to the defendant having committed offenses other than the one for which he is now on trial. Such evidence cannot be considered by you against the defendant as any evidence of guilt in this case. Said evidence was admitted before you for the purpose of aiding you, if it does aid you, in passing upon the weight you will give his testimony, and you will not consider the same for any other purpose.

You are instructed that if there is any testimony before you in this case regarding the defendant's having committed offenses other than the offense alleged against him in the indictment in this case, you cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other offenses, if any were committed, and even then you may only

EXH C

consider the same in determining the knowledge or intent of the defendant, if any, in connection with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

Now, bearing in mind the foregoing instructions, if you find and believe from the evidence beyond a reasonable doubt that on or about 17th day of November, A.D., 2008, in the County of Dallas and State of Texas, the Defendant, John Edward Hall, did unlawfully then and there intentionally or knowingly cause the death of Marvin Davis, an individual, hereinafter called deceased, by shooting the deceased with a firearm, a deadly weapon, you will find the defendant guilty of the offense of murder and so say by your verdict.

If you do not so find and believe from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "Not Guilty."

A person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other person's use or attempted use of force.

The use of force against another is not justified in response to verbal provocation alone.

The use of force against another is not justified if

the actor sought explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was unlawfully carrying a weapon.

It is unlawful for a person who has been convicted of a felony to possess a firearm at any location other than the premises at which the person lives.

A person is justified in using deadly force against another if he would be justified in using force against the other in the first place, as above set out, and when he reasonably believes that such deadly force is immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

By the term "reasonable person" is meant an ordinary and prudent person in the same circumstances.

By the term "reasonable belief" as used herein is meant a belief that would be held by an ordinary prudent person in the same circumstances as defendant.

By the term "deadly force" is meant force that is intended or known by the persons using it to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

When a person is attacked with unlawful force, or he reasonably believes he is under attack or attempted attack with unlawful deadly force by a person, and there is created

in the mind of such person a reasonable expectation or fear of death or serious bodily injury, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, viewed from his standpoint at the time, to protect himself from such attack or attempted attack, as a person has a right to defend his life and person from apparent danger as fully and to the same extent as he would had the danger been real, provided that he acted upon a reasonable apprehension of danger, as it appeared to him from his standpoint at the time, and that he reasonably believed such force was immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

Now, if you find from the evidence beyond a reasonable doubt that the defendant, John Edward Hall, did kill the said Marvin Davis by shooting the deceased with a firearm, a deadly weapon, as alleged in the indictment, but you further find from the evidence, or you have a reasonable doubt thereof, that, viewed from the standpoint of the defendant at the time, from the words or conduct, or both of Marvin Davis it reasonably appeared to defendant that his life was in danger and there was created in defendant's mind a reasonable expectation or fear of death or serious bodily injury from the use of unlawful deadly force at the hands of

EXH C

Marvin Davis, and that the defendant, acting under such apprehension and reasonably believing that the use of deadly force, by his intervention, on his part was immediately necessary to protect himself against Marvin Davis's use or attempted use of unlawful deadly force and that he, therefore, shot the deceased with a firearm, a deadly weapon, said Marvin Davis, then you will find the defendant not guilty; or if you should have a reasonable doubt as to whether the defendant was acting in defense of himself on said occasion under such foregoing circumstances, then you should give the defendant the benefit of that doubt and find him not guilty.

You are further instructed that in determining the existence of real or apparent danger, it is your duty to consider all of the facts and circumstances in evidence in the case before you and consider the words, acts, and conduct, if any, of Marvin Davis at the time of and prior to the time of the alleged killing, if any, and in considering such circumstances, you should place yourselves in defendant's position at that time and view them from his standpoint alone.

In determining whether an actor reasonably believed that the use of deadly force was immediately necessary, you may not consider whether the actor failed to retreat if the actor had a right to be present at the location where the

deadly force was used, the actor did not provoke the person against whom the deadly force was used, and the actor was not engaged in criminal activity at the time the deadly force was used.

In all criminal cases the burden of proof is on the State.

At times throughout the trial the Court has been called upon to pass on the question of whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness. As to any offer of evidence that has been rejected by the Court, you, of course, must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case,

nor to indicate any desire respecting its outcome. The Court has not intended to express any opinion upon any matter of fact in this case, and if you have observed anything which you have or may interpret as the Court's opinion upon any matter of fact in this case, you must wholly disregard it.

All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that a person has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial. The law does not require a defendant to prove his innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The prosecution has the burden of proving the defendant guilty and it must do so by proving each and every element of the offense charged beyond a reasonable doubt and if it fails to do so, you must acquit the defendant.

It is not required that the prosecution prove guilt beyond all possible doubt; it is required that the prosecution's proof excludes all "reasonable doubt" concerning the defendant's guilt.

In the event you have a reasonable doubt as to the

defendant's guilt after considering all the evidence before you, and these instructions, you will acquit him and say by your verdict "Not guilty".

You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given to the testimony, but you are bound to receive the law from the Court, which is herein given you, and be governed thereby.

After you retire to the jury room, you will select one of your members as your presiding juror. It is the presiding juror's duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form attached hereto, and signing the same as presiding juror.

After you retire to consider your verdict, no one has any authority to communicate with you except the officer who has you in charge. During your deliberations in this case, you must neither consider, discuss, nor relate any matters not in evidence before you. You should neither consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

After you have retired, you may communicate with this Court in writing through the bailiff who has you in

charge. Your written communication must be signed by the presiding juror. Do not attempt to talk to the bailiff, the attorneys, or the Court regarding any question you may have concerning the trial of the case. After you have reached a unanimous verdict or if you desire to communicate with the Court, please use the jury call button on the wall and one of the bailiffs will respond.

TRACY F. HOLMES, JUDGE
363rd Judicial District Court
Dallas County, Texas

2009 OCT 29 AM 9:06
GARY FITZSIMMONS
DISTRICT CLERK
DALLAS CO., TEXAS
DEPUTY

EXH. C

V E R D I C T S H E E T

(Use the appropriate form below in returning your verdict.)

We, the jury, find the defendant, John Edward Hall, guilty of murder as charged in the indictment.

D Cook

PRESIDING JUROR David Cook

PRINTED NAME

- OR-

We, the jury, find the defendant, John Edward Hall, "Not Guilty."

PRESIDING JUROR

PRINTED NAME

EXH.C

IN THE SUPREME COURT OF UNITED STATES

JOHN HALL
APPLICANT

VS.

BOBBY CUMPLIN - DIRECTOR OF TDCJ
RESPONDENT

JOHN HALL'S AFFIDAVIT IN LIEU OF DOCUMENTS, UNABLE TO OBTAIN

I, JOHN HALL, PROCEEDING PRO SE, STATE THE FOLLOWING FACTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE UNDER THE PENALTY OF PERJURY. TO WIT:

1) HALL WAS PROVIDED TRIAL COUNSEL, KENNETH WEATHERSPOON, WHO WAS CONSTITUTIONALLY INEFFECTIVE ASSISTANCE OF COUNSEL (IA) UNDER SIXTH (6th) AMEND., WHEN HE WAS "CONSTRUCTIVE DENIAL OF COUNSEL" AT CRITICAL STAGES (ie. PRE-TRIAL INVESTIGATION; PRIOR PRE-LIMINARY HEARING, FAILURE TO ATTACK PRIOR CONVICTIONS, FAILURE TO TURNOVER WORK CASE FILE; TRIAL)

2) HALL FILED MOTIONS FOR DISCOVERY AND INSPECTION FOR BOTH WEATHERSPOON AND PROSECUTION FILES, TO SEE IF IN FACT WAS THERE WAS ANY PLEA BARGAIN OFFERS MADE BY THE STATE, IN WHICH HALL DID NOT KNOW ABOUT.

AFFIDAVIT CONT...

3) HALL FILED MOTION TO DALLAS POLICE DEPARTMENT (DPD) REQUESTING A COPY OF PROBABLE CAUSE AFFIDAVIT IN PRIOR DRUG CONVICTION AND WARRANT CHECKS THAT WAS MADE ON THAT DAY. THERE WAS NO ANSWER FROM (DPD) TO HALL STATUS CHECK.

4) AGAIN, HALL REQUESTED INFORMATION ABOUT PRIOR CONVICTION AND PLEA BARGAIN OFFERS, BUT ONCE AGAIN THERE HAS BEEN AN IMPLIED DENIAL OF ACCESS OF RECORDS IN VIOLATION OF 6TH AND 14TH AMEND. DUE PROCESS (FUNDAMENTAL FAIRNESS) WHICH WAS UNREASONABLE APPLICATION §2254 (d)(1) LEGAL CONCLUSION CULLEN V. PINHOLSTER, 131 S.CT. 1388 (2011) §2254 (d) (FED. LAW)

HALL CONTENDS THESE STEP WERE TAKEN TO FURTHER DEVELOP THE RECORD, IN WHICH (TCCA) HAD BEFORE IT. HALL WAS ATTEMPTING TO EXHAUST STATE COURT REMEDIES UNDER §2254 (b)(1)(A) (FED. LAW).

THE COURTS HAVE ANSWERED WITH THAT BECAUSE HIS CASE IS CLOSED THERE IS NO NEED FOR THE RECORD, WHICH UNDER §2254 (d)(2), (e)(2) (FED. LAW) WAS UNREASONABLE APPLICATION §2254(d)(1) CULLEN (FED. CLAIM) WARRANTING AN EVIDENTIARY HEARING.

UNSWORN DECLARATION

I, JOHN HALL, DECLARE UNDER PENALTY OF PERJURY AS AUTHORIZED BY TITLE 28 U.S.C. § 1746, THE FACTUAL ALLEGATIONS CONTAINED IN THIS DOCUMENT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

John Hall
JOHN HALL

THIS CASE IS ON APPEAL

EXH. 3

VOL 470 PAGE 113

CASE NO. F-0863139-W
INCIDENT NO./TRN: 9174717839

THE STATE OF TEXAS	§	IN THE 363rd JUDICIAL DISTRICT
V.	§	COURT
JOHN EDWARD HALL	§	DALLAS COUNTY, TEXAS
STATE ID NO.: TX05555005	§	

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. Tracy Holmes	Date Judgment Entered:	10/29/2009
Attorney for State:	Elaine Evans	Attorney for Defendant:	Kenneth Weatherspoon

Offense for which Defendant Convicted:
MURDER/3RD

Charging Instrument: **INDICTMENT**	Statute for Offense: **19.02 Penal Code**
Date of Offense: **11/17/2008**	
Degree of Offense: **1ST DEGREE FELONY**	Plea to Offense: **NOT GUILTY**
Verdict of Jury: **GUILTY**	Findings on Deadly Weapon: **YES, A FIREARM**
Plea to 1st Enhancement Paragraph: **TRUE**	Plea to 2nd Enhancement/Habitual Paragraph: **TRUE**
Findings on 1st Enhancement Paragraph: **TRUE**	Findings on 2nd Enhancement/Habitual Paragraph: **TRUE**

Punishment Assessed by: **JURY**	Date Sentence Imposed: **10/29/2009**	Date Sentence to Commence: **10/29/2009**

Punishment and Place of Confinement: **70 YEARS INSTITUTIONAL DIVISION, TDCJ**

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ **SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A**

Fine:	Court Costs:	Restitution:	Restitution Payable to:
$ **N/A**	$ **560.00**	$ **N/A**	☐ **VICTIM** (see below) ☐ **AGENCY/AGENT** (see below)

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was **N/A** .

Time Credited:
If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.
From **11/18/2008** to **10/29/2009** From to From to
From to From to From to
If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.
N/A DAYS NOTES: **N/A**

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Dallas County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

ARRAIGNMENT SHEET

Book-in No. 08090395
LAI No. 756948

Black Male 06/01/1976

The State of Texas, County of Dallas

I, Katherine Miracle, of Dallas County, Texas, sitting as a Magistrate, do hereby certify that on this, the 19 day of November, 2008 at 1:09 AM, sitting at 111 Commerce, City of Dallas, Dallas County, Texas appeared JOHN EDWARD HALL, being a person under arrest, and that I have in clear language informed the person arrested of the accusation against him and of any Affidavit filed herewith, and of his right to retain counsel, and of his right to the appointment of counsel if he is indigent and cannot afford counsel, and of his right to remain silent, and of his right to have an attorney present during any interview with peace officers or attorneys representing the State, and of his right to terminate the interview at any time, and of his right to have an examining trial.

I informed the person arrested that he does not have to make any statement at all, and that any statement made by him may be used in evidence against him on his trial for the offense concerning which the statement is made.

I informed the person arrested that reasonable time and opportunity would be allowed him to consult counsel and of his rights to bail if allowed by law.

I also informed the person arrested that if he is not a citizen of the United States that he may have the right to contact consular officials from his country and that if he is a citizen of certain countries that consular officials would be notified of this arrest without further action required on his part.

☑ The person arrested stated that he is a citizen of the United States of America

Offense(s):	Cause No.	Agency Name	Bond Amount	
MURDER	f0863139	Dallas Police	$250,000.00	Cash/Sur
POSS CS PG 1 <1G	f0873225	Dallas Police	$15,000.00	Cash/Sur

(EXH. 1)

Remanded to custody of DSO in witness whereof, I have subscribed my name this the 19 day of November, 2008.

Magistrate Dallas County, Texas

LM

DEFENDANT Hall, John Edward B M 06011976 CHARGE MURDER/3RD

AKA:

ADDRESS 8201 Fair Oaks #2065, Dallas, Tx LOCATION DSO

FILING AGENCY TXDPD0000 DATE FILED December 04, 2008 COURT JDC363

COMPLAINANT Davis, Martin F-0863139 VT#:

C/C

TRUE BILL INDICTMENT

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS: The Grand Jury of Dallas County, State of Texas, duly organized at the October Term, A.D., 2008 of the Criminal District Court 7, Dallas County, in said Court at said Term, do present that one **HALL, JOHN EDWARD**, Defendant,

On or about the 17 th day of November A.D., 2008 in the County of Dallas and said State, did unlawfully then and there intentionally and knowingly cause the death of MARVIN DAVIS, an individual, hereinafter called deceased, by SHOOTING THE DECEASED WITH A FIREARM, a deadly weapon,

And it is further presented to said Court that prior to the commission of the aforesaid offense, the said defendant was convicted of a felony offense of POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER MORE THAN 4 GRAMS BUT LESS THAN 200 GRAMS, on the 8TH day of MARCH, 2007, A.D., in Cause Number F-0671635 on the docket of 363RD JUDICIAL DISTRICT COURT, of DALLAS County, Texas under the name of JOHN EDWARD HALL and said conviction was a final conviction.

And it is further presented to said Court that prior to the commission of each of the aforesaid offenses

(EXH. 2)

THE STATE OF TEXAS
COUNTY OF DALLAS
I, Gary Fitzsimmons, District Clerk of Dallas County, Texas, do hereby certify that the foregoing is a true and correct copy as the same appears on record now on file in my office.
Witness my hand on DEC 17 2008
GARY FITZSIMMONS DISTRICT CLERK
Dallas County, Texas
By T. Lilley Deputy

IN THE 363rd JUDICIAL DISTRICT COURT
OF TEXAS, DALLAS DIVISION

JOHN EDWARD HALL DEFENDANT VS. STATE OF TEXAS RESPONDENT	CRIMINAL CASE NO. W08-63139-W

AFFIDAVIT OF JOHN E. HALL (DEFENDANT)

I, JOHN HALL, DEPOSE AND STATE THE FOLLOWING FACTS ARE TRUE AND CORRECT UNDER PENALTY OF PERJURY TO WIT:

2) I, John Hall, STATE THAT I WAS APPOINTED COUNSEL, KENNETH WEATHERSPOON, BY CLERK OF COURT ON OR ABOUT NOV. 18, 2008.

3) I, JOHN HALL, STATE THAT I ALLEGE, BASED UPON INFORMATION AND BELIEF, THAT COURT APPOINTED COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE.

UPON ARREST AND BEFORE MAGISTRATE JUDGE, I JOHN HALL CERTIFIED THAT I WAS INDIGENT AND COULD NOT AFFORD A LAWYER. COURTS APPOINTED KENNETH WEATHERSPOON ON OR ABOUT NOV. 18, 2008. UPON MEETING WITH COUNSEL AND TALKING TO HIM (COUNSEL) WAS ASSIGNED A (P.I) TO INVESTIGATE THE CASE. I TOLD COUNSEL AND (P.I) ABOUT ALL CIRCUMSTANCE THAT HAPPENED ON, BEFORE, AND DURING CHARGED OFFENSE. I CLAIMED SELF-DEFENSE OF MYSELF AS JUSTIFICATION TO CRIME. DEFENSE COUNSEL GAVE ME THE ASSURANCE THE HE COULD BEAT THIS CASE IN JURY TRIAL. HE SAID HAD ALL MY WITNESSES READY FOR TRIAL, THAT (P.I) TALKED TO.

BUT WHEN IT CAME TIME FOR TRIAL THE ONLY WITNESSES SHOWED TO TESTIFY WERE MY SISTER AND (COUSIN) (MISS. HARRIS) FOR CHARACTER PURPOSE ONLY REALLY.

COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE BECAUSE HE NEVER ONCE INFORMED ME OF THE AFFIRMATIVE DEFENSE OF SUDDEN PASSION ARISING FROM ADEQUATE CAUSE FOR A LESSER-INCLUDED OFFENSE (LIO) OF MANSLAUGHTER. TO BE EFFECTIVE ASSISTANCE COUNSEL MUST MAKE PRE-TRIAL INVESTIGATIONS INTO ANY AND ALL AVAILABLE OPTIONS SUCH AS: (LIO); CHALLENGING PRIOR CONVICTIONS; NOTIFY HIM ANY PLEA AGREEMENTS AND TURNING OVER HIS WORK/CASE FILE. NOT TO DO SO WOULD CONSTITUE A CONSTITUTIONAL VIOLATION OF 6TH AMEND. (STAGE AND IN PARTIAL HEARINGS) AND (IAC) FOR FAILURE TO PUT PROSECUTION CASE TO ADVERSIAL PROCESS OF HAVING AN OPPORTUNITY TO HAVE THESE ELEMENTS/FACTS JUDGED BY THE JURY IN VIOLATION OF HIS CONSTITUTIONAL RIGHT OF 14TH AMEND DUE PROCESS (ACCESS TO COURTS) AND PROVE THE ELEMENTS BEYOND A REASONABLE DOUBT.

DEFENDANT ASSERTS COUNSEL WAS CONSTITUTIONALLY (IAC) BECAUSE HE REPEATEDLY TRIED TO OBTAIN (ACCESS TO COURT) TO GET HIS CASE/WORK FILE FROM DEFENSE COUNSEL ON SEVERAL OCCASIONS BUT TO NO SUCCESS. PLEASE SEE EXH. (A) TRIAL COUNSEL LETTER REQUESTING CASE/WORK FILE; EXH. (B) LETTER TO CAAP PROGRAM REQUESTING WORK/CASE FILE AND EXH (C) THIS MOTION TO COMPEL WORK/CASE FILE.

DEFENDANT PRAYS THAT THIS AFFIDAVIT ALONG WITH EXH (A-C) COMPELLS THIS COURT TO ORDER DEFENSE COUNSEL OF RECORD TO SURRENDERS WORK/CASE FILE TO DEFENDANT. TO PURSUE HIS CONSTITUTIONAL RIGHT UNDER 14TH AMEND. (ACCESS TO COURTS) UNDER AEDPA 28 USC. §2254 HIS OPPORTUNITY TO BE HEARD IN FEDERAL COURTS CHALLENGING HIS STATE CONVICTION AND SENTENCE.

I, JOHN HALL, DECLARE UNDER PENALTY OF PERJURY, PURSUANT TO 28 USC. § 1746, THAT THE ABOVE STATED FACTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

EXECUTED ON THIS 28th DAY OF June, 2021.

Respectfully Submitted,

John E. Hall

JOHN HALL #1008233

RAMSEY UNIT

1100 FM 655

ROSHARON, TX. 77583

CERTIFICATE OF SERVICE

I, JOHN HALL, DO HEREBY CERTIFY THAT A COPY OF THIS FOREGOING INSTRUMENT IS SERVED UPON CLERK OF THIS COURT, VIA PROPERLY ADDRESSED U.S. MAIL, WITH FIRST-CLASS POSTAGE AFFIXED PREPAID THERETO, BY PLACING INTO INTERNAL MAILING SYSTEM AS MADE AVAILABLE TO INMATES AT RAMSEY UNIT. THE DEFENDANT FURTHER REQUESTS A COPY BE FORWARD TO INTERESTED PARTIES, VIA CM/ECF SYSTEM.

EXECUTED ON THIS 28th DAY OF JUNE, 2021.

Respectfully Submitted,

John E. Hall

JOHN HALL #1008233

RAMSEY UNIT

1100 FM 655

ROSHARON, TX. 77583

EXH. 9 Pg. 3

IN THE 363rd JUDICIAL DISTRICT
COURT OF TEXAS, DALLAS DIVISION

JOHN EDWARD HALL
PLAINTIFF

VS

STATE OF TEXAS
DEFENDANT

CRIMINAL CAUSE NO.
W08-63139-W

RE: MOTION TO COMPELL COUNSEL
TO SURRENDER HIS CASE FILE TO
JOHN HALL

NOW COMES, JOHN HALL, PROCEEDING IN PRO SE #1600233 MOVES THIS HONORABLE COURT TO ISSUE AN ORDER, COMPELLING ATTORNEY KENNETH WEATHERSPOON OF RECORD TO SURRENDER HIS WORK CASE FILE HE CREATED IN HIS REPRESENTATION OF HALL.

MR. HALL ATTEST THAT THE PORTIONS OF WORK CASE FILE HE NEEDS FROM WEATHERSPOON, ARE NOT LIMITED TO WIT:

1) POLICE REPORTS
2) WITNESSES STATEMENTS
3) SEARCH AND SEIZURE WARRANTS AND PROBABLE CAUSE AFFIDAVITS SUPPORTING

EXHIBIT 10
1 OF 5

4) ALL PRE-TRIAL INVESTIGATING REPORTS FROM PRIVATE INVESTIGATOR (P.I.)

5) ALL PRE-TRIAL MOTIONS FILED, ORDER AND ANSWERS

6) ALL COMMUNICATIONS FROM ATTORNEY AND HALL INCLUDING (ALL PROPOSED PLEA AGREEMENTS OR STIPULATIONS FROM PROSECUTION)

7) DOCKET SHEETS OF MINUTES OF WEATHERSPOON

MR. HALL HAS ALREADY FILED BOTH STATE AND FEDERAL HABEAS CORPUS APPLICATIONS UNDER TCCP. ART. 11.07 INTERPRETATION OF TITLE 28 U.S.C.S. § 2254, WHICH WERE BOTH MERITORIOUS AND TIMELY FILED UNDER TITLE 28 U.S.C.S. § 2244(d) STATUTORY LIMITATIONS (FED.LAW).

THESE RECORDS ARE IMPORTANT BECAUSE UNDER TITLE 28 U.S.C. S §§ 2254 (d)(2), § 2254 (e)(1) ISSUE OF "PRESUMPTION OF CORRECTNESS" AND § 2254 (e)(2) ISSUE OF "EVIDENTIARY HEARING" RECORD MUST ADEQUATELY DEVELOPED TO SUPPORT THE CLAIMS:

1) HALL HAS MADE WRITTEN ATTEMPTS REQUESTING FROM WEATHERSPOON, HIS WORK CASE FILE IN HOPES THAT HE ACTS PROFESSIONALLY AND RESPONSIBLE BY TURNING OVER FILES.

2) TO THIS DATE, WEATHERSPOON HAS FAILED TO SURRENDER HALL'S WORK CASE FILES. HALL ARGUES THAT WEATHERSPOON, IS CLEARLY AWARE THAT HALL IS ATTEMPTING TO MAKE CONSTITUTIONALLY (IAC) AND ATTEMPTING TO FRUSTRATE AND STOP HIM.

CERTIFICATE OF SERVICE

I, JOHN HALL, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THIS FOREGOING INSTRUMENT UPON THE CLERK OF THIS COURT, 133 N. RIVERFRONT BLVD., FRANK CROWLEY COURT BLDG., DALLAS, TX. 75270, PROPERLY ADDRESSED U.S. MAIL, WITH FIRST CLASS POSTAGE PREPAID AFFIXED THERE TO, BY PLACING INSIDE INSTITUTIONAL MAILING SYSTEM UNDER HOUSTON V. LACK, 108 S.CT. 2379 (1988) KNOWN AS "MAILBOX RULE", AT RAMSEY UNIT 1, 1100 FM 655, ROSHARN, TX 77583.

RESPECTFULLY SUBMITTED
DONE THIS 20th DAY JULY 2023

John Hall

JOHN HALL #1608233
RAMSEY UNIT 1
1100 FM 655
ROSHARN, TX. 77583

CIC : JEH

EXHIBIT 10
5 OF 5

IN THE FIFTH CIRCUIT
OF COURT OF APPEALS

JOHN EDWARD HALL
APPLICANT

V.S.

STATE OF TEXAS
RESPONDENT

CRIM. CASE NO: W08-63139-W

AFFIDAVIT OF JOHN E. HALL

I, JOHN HALL, BEING OF SOUND MIND AND BODY, OVER THE AGE OF 18, HEREBY DEPOSE AND STATE THE FOLLOWING FACTS ARE TRUE AND CORRECT UNDER THE PENALTY OF PERJURY TO WIT:

2) I, JOHN HALL, STATE THAT I WAS APPOINTED TRIAL COUNSEL KENNETH WEATHERSPOON, BY CLERK OF COURT ON OR ABOUT NOV. 18, 2008.

3) I, JOHN HALL, STATE THAT I WAS DEPRIVED OF FUNDAMENTALLY FAIR TRIAL BY THE APPOINTMENT OF CONSTITUTIONALLY INEFFECTIVE ASSISTANCE OF COUNSEL (IAC).

UPON ARREST AND BEFORE MAGISTRATE JUDGE, I, JOHN HALL, CERTIFIED THAT I WAS INDIGENT AND COULD NOT AFFORD A LAWYER, AND COURTS APPOINTED KENNETH WEATHERSPOON ON OR ABOUT NOV. 18, 2008. I TALKED TO COUNSEL AND PRIVATE INVESTIGATOR (P.I.) ABOUT ALL CIRCUMSTANCE SURROUNDING CHARGE OFFENSE AT HAPPENED BEFORE, DURING AND AFTER. I CLAIM SELF-DEFENSE FOR JUSTIFICATION OF CRIME. DEFENSE COUNSEL, GAVE ME ASSURANCES THAT HE WOULD BEAT THIS CASE AT TRIAL. MR. WEATHERSPOON, TOLD ME HE ALL MY WITNESSES

(EXH. 11)

I.

READY FOR TRIAL. WHEN IT CAME TIME FOR TRIAL, I HAD NO DEFENSIVE WITNESSES ACCEPT MY SISTER (LADORIS HALL) AND COUSIN (MRS. HARRIS) FOR CHARACTER WITNESSES PURPOSE ONLY.

MR. WEATHERSPOON) WAS CONST. (IAC) BECAUSE HE NEVER ONCE TALKED TO ME ABOUT THE AFFIRMATIVE DEFENSE OF SUDDEN PASSION AND ADEQUATE CAUSE FOR LESSER-INCLUDE OFFENSE (LIO) FOR (VOLUNTARY) MANSLAUGHTER.

TO BE EFFECTIVE ASSIST. OF COUNSEL UNDER 6th AMEND., COUNSEL MUST MAKE PRE-TRIAL INVESTIGATION INTO AND AND ALL AVAILABLE OPTIONS & TO WIT: (LIO)'S ATTACKING PRIOR CONVICTIONS; NOTIFYING HIM ABOUT AND PLEA BARGAIN OFFERS, WHICH WERE NOT DONE IN THIS CASE.

DEFENDANT, ASSERTS MR. WEATHERSPOON WAS CONST. (IAC) BECAUSE HE REPEATEDLY TRIED TO GAIN ACCESS TO HIS WORK CASE FILE, WHEN HE WROTE LETTERS TO COUNSEL, INCORP. THE TEXAS BAR PROGRAM (TAAP) REQUESTING WORK FILE AND MOTIONS TO COURTS TO COMPEL COUNSEL TURNOVER SAID WORK FILE.

DEFENDANT, ASSERTS MR. WEATHERSPOON WAS CONST. (IAC) UNDER 6th AMEND. (FULL AND FAIR HEARING) AND 14th AMEND. DUE PROCESS (FUNDAMENTAL FAIRNESS) BECAUSE MR. WEATHERSPOON INDUCED A PLEADING OF "TRUE" TO ENHANCEMENT PARAGRAPH WITHOUT PROPERLY INVESTIGATING OR PURSUING AN ATTACK ON PRIOR CONVICTION BY FILING ANY MOTIONS TO QUASH THEM. HE CAN NOT INDUCED A PLEADING OF "TRUE" WITHOUT INVESTIGATION 6th AMEND. VIOLATION "DEFICIENT PERFORMANCE".

DEFENDANT, PRAYS THAT THIS AFFIDAVIT ALONG WITH EXHIBITS WOULD COMPEL THIS COURT TO ORDER DEFENSE COUNSEL OF RECORD TO SURRENDER WORK FILE TO DEFENDANT, ORDER EXPANSION OF RECORDS

TO PROVIDE COPY OF PRELIMINARY HEARING HELD IN DRUG POSSESSION THAT WAS CONDUCTED ON OR ABOUT NOV. OF 2016 AND RECORDS FROM DEFENSE OR PROSECUTION TO SEE IF ANY PLEA BARGAIN OFFERS WERE MADE.

DEFENDANT, JOHN HALL HAS BEEN PURSUING FILING MERITORIOUS HABEAS PETITIONS UNDER HIS CONST. RIGHT 14th AMEND. (ACCESS TO COURTS) OR (AEDPA) TITLE 28 U.S.C.S. §2254 OF HIS OPPORTUNITY TO BE HEARD IN FED. COURTS, CHALLENGING HIS CONVICTION AND SENTENCE.

I, JOHN HALL, DECLARE UNDER PENALTY OF PERJURY, PURSUANT TO 28 U.S.C. § 1746, THE ABOVE STATED FACTS ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

EXCUTED ON THIS 4th DAY OF JAN. 2023
RESPECTFULLY SUBMITTED
John Hall
JOHN HALL #1608233
RAMSEY UNIT 1
1100 FM 655
ROSHARON, TX. 77583

CERTIFICATE OF SERVICE

I, JOHN HALL, DO HEREBY CERTIFY THAT A COPY OF THIS FOREGOING AFFIDAVIT, IS SERVED UPON CLERK OF THIS COURT, VIA PROPERLY ADDRESSED U.S. MAIL, WITH FIRST-CLASS POSTAGE AFIXED PRE-PAID THERETO, BY PLACING INTO UNIT RAMSEY UNIT INTERNAL MAILING SYSTEM, THE DEFENDANT FURTHER REQUESTS A COPY BE FORWARD TO INTERESTED PARTIES VIA CM/ECF SYSTEM.

EXCUTED ON THIS 4th DAY OF JAN. 2023.
RESPECTFULLY SUBMITTED
John Hall

C.C. FILE/JEH

(EXH. 11)
III.