UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN PAUL WALDON,	§	CIVIL ACTION NO
(TDCJ–CID #1602011)	§	4:22-cv-04124
Petitioner,	§	
	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
	§	
BOBBY LUMPKIN,	§	
Respondent.	§	

MEMORANDUM ON DISMISSAL

The petition by Petitioner John Paul Waldon for a writ of *habeas corpus* under 28 USC § 2254 is dismissed without prejudice as successive. Dkt 1.

1. Background

Waldon is currently serving a twenty-five year sentence in Cause Number 1199792 for a 2009 felon-in-possession-of-a-firearm conviction imposed by a Texas state court. He filed a federal petition in December 2013 in Civil Action No 4:13-3752. Judge Ewing Werlein dismissed that petition on the merits. *Waldon v Stephens*, 4:13-cv-3752, Dkt 29 at 1–3 (SD Tex Jan 26, 2015).

Waldon filed his current petition in November 2022. He challenges the same 2009 conviction as in Cause Number 1199792 on the ground that trial counsel rendered ineffective assistance. Dkt 1 at 6–7.

2. Analysis

A district court can consider of its own accord whether a *habeas corpus* petition is successive, thus depriving it of jurisdiction to proceed. *Rodriguez v Johnson*, 104 F3d 694, 697 n 1 (5th Cir 1997) (citations omitted). The above

background raises the question whether there is jurisdiction to proceed.

The Anti-Terrorism and Effective Death Penalty Act of 1996 in relevant part provides, "Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 USC § 2244(b)(3)(A). Nothing in the record indicates that Waldon obtained prior authorization from the United States Court of Appeals for the Fifth Circuit to file a successive petition. This means that jurisdiction is lacking to consider the claim asserted in this action.

Federal courts are authorized to transfer civil actions to the appropriate court upon finding a want of jurisdiction, where it would then proceed as if originally filed there. 28 USC § 1631. Transfer is inappropriate here. The petition doesn't seek permission to proceed on a successive petition. It seeks only substantive relief. Waldon must make an appropriate filing directly with the Fifth Circuit to seek the requisite permission to challenge his 2009 conviction for felon in possession of a firearm in Cause Number 1199792.

3. Certificate of appealability

Rule 11 of the Rules Governing Section 2254 Cases requires a district court to issue or deny a certificate of appealability when entering a final order that is adverse to the petitioner. A certificate of appealability will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right." 28 USC § 2253(c)(2). This requires a petitioner to demonstrate "'that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.'" *Tennard v Dretke*, 542 US 274, 282 (2004), quoting *Slack v McDaniel*, 529 US 473, 484 (2000). Where the court denies relief based on procedural grounds, the petitioner 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 they "would find it debatable whether the

district court was correct in its procedural ruling." *Slack*, 529 US at 484.

The Court concludes that jurists of reason would not debate whether any procedural ruling in this case was correct. Waldon hasn't made the necessary showing for a certificate of appealability.

4. Conclusion

The petition for a writ of *habeas corpus* under 28 USC § 2254 filed by John Paul Waldon is DISMISSED WITHOUT PREJUDICE for lack of jurisdiction. Dkt 1.

Any other pending motions are DENIED AS MOOT.

A certificate of appealability is DENIED.

SO ORDERED.

Signed on December 19, 2022, at Houston, Texas.

Hon. Charles Eskridge
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN PAUL WALDON, (TDCJ–CID #1602011) Petitioner,	§	CIVIL ACTION NO 4:22-cv-04124
vs.	§	JUDGE CHARLES ESKRIDGE
BOBBY LUMPKIN, Respondent.	§	

ORDER OF DISMISSAL

This civil action is DISMISSED WITHOUT PREJUDICE for the reasons stated in the Memorandum on Dismissal entered this same day.

SO ORDERED.

Signed on December 19, 2022, at Houston, Texas.

Hon. Charles Eskridge
United States District Judge

A.

United States Court of Appeals for the Fifth Circuit

No. 23-20015

JOHN PAUL WALDON,

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. 4:22-CV-4124

UNPUBLISHED ORDER

Before CLEMENT, SOUTHWICK, and HIGGINSON, *Circuit Judges*.

PER CURIAM:

John Paul Waldon, Texas prisoner # 1602011, seeks a certificate of appealability (COA) to appeal the dismissal of his 28 U.S.C. § 2254 application challenging his conviction of unlawful possession of a firearm by a felon, for which he was sentenced to a 25-year term of imprisonment. The district court determined that the application was an unauthorized successive § 2254 application.

Waldon argues the merits of his claims of ineffective assistance of counsel, and he contends that the district court erred in various ways in denying the claims raised in his first § 2254 application. He also asserts the district court error in the adjudication of his subsequent § 2254 application, including the district court's failure to conduct an evidentiary hearing. Further, as to his subsequent § 2254 application, Waldon argues that the application is not successive because his claims were not adjudicated on the merits in state court or in the district court.

To obtain a COA, Waldon must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Where, as here, the district court's denial of federal habeas relief is based on procedural grounds, this court will issue a COA "when the prisoner shows, at least, 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 v. McDaniel*, 529 U.S. 473, 484 (2000). Because Waldon has not met this standard, his request for a COA is DENIED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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

March 02, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-20015 Waldon v. Lumpkin
USDC No. 4:22-CV-4124

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Rebecca L. Leto, Deputy Clerk
504-310-7703

Mr. Edward Larry Marshall
Mr. Nathan Ochsner
Mr. John Paul Waldon

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

April 17, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-20015 Waldon v. Lumpkin
USDC No. 4:22-CV-4124

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Rebecca L. Leto

By: _____
Rebecca L. Leto, Deputy Clerk
504-310-7703

Mr. Edward Larry Marshall
Mr. John Paul Waldon

E.(1)

United States Court of Appeals
for the Fifth Circuit

No. 23-20015

JOHN PAUL WALDON,

Petitioner—Appellant,

versus

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

Respondent—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-4124

ORDER:

IT IS ORDERED that Appellant's motion for leave to file petition for rehearing en banc out of time is DENIED.

Leslie H. Southwick

LESLIE H. SOUTHWICK
United States Circuit Judge

E.(2)