

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LIONEL J. DAVIS
VERSUS
STATE OF LOUISIANA

CIVIL ACTION
NO. 23-6700
SECTION "R" (4)

TRANSFER ORDER

Petitioner Lionel J. Davis filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which he challenges the constitutionality of his 1987 Orleans Parish conviction for first degree robbery and simple robbery in Orleans Case No. 314-427. Petitioner asserts that he is factually innocent of first-degree robbery and simple robbery because his conviction by non-unanimous jury verdict was unconstitutional.¹

A review of this Court's records reflects that Davis previously filed four § 2254 petitions in this Court related to the same conviction.² Davis filed his first federal petition on February 9, 1988.³ The Court dismissed the

¹ R. Doc. 1 at 6.

² Davis's filing history is outlined in the Report and Recommendation adopted by the Court in Civil Action Number 08-4175 "F"(4), leading to the dismissal of that petition for want of jurisdiction over a second or successive petition pursuant to 28 U.S.C. § 2244(b)(1). *Davis*, No. 08-4175, R. Docs. 39, 40, & 41.

³ *Davis*, No. 88-510, R. Docs. 2 & 3.

petition without prejudice on February 22, 1988, for failure to exhaust state court remedies.

Davis filed a second federal petition on September 4, 1991, asserting claims of insufficient evidence and ineffective assistance of counsel.⁴ The Court denied the application on the merits on March 17, 1992.⁵ Both this Court and the United States Fifth Circuit Court of Appeals denied Davis's request for issuance of a certificate of probable cause.⁶

Davis's third federal petition was filed April 8, 1996.⁷ The Court dismissed with prejudice some of Davis's claims as repetitive of those raised in his 1991 federal petition and further dismissed without prejudice the remainder of his claims to allow Davis to seek authorization from the United States Fifth Circuit to file a second or successive petition under 28 U.S.C. § 2244(b)(1).⁸

Davis filed a fourth federal petition on August 11, 2008, asserting that his sentence violated double jeopardy and he was denied due process at a prior hearing.⁹ After reviewing the foregoing history of Davis's federal

⁴ *Davis*, No. 91-3268, R. Doc. 1.

⁵ *Id.*, R. Docs. 8 & 10.

⁶ *Id.*, R. Docs. 14 & 15.

⁷ *Davis*, No. 96-1149, R. Doc. 1.

⁸ *Id.*, R. Docs. 9 & 10.

⁹ *Davis*, No. 08-4175, R. Docs. 1, 6, & 7.

filings, and considering the narrow holding in *Jiminez v. Quarterman*, 555 U.S. 113, 121 (2009), related to state court out-of-time appeals, the Court dismissed the petition for want of jurisdiction finding that Davis failed to obtain authorization to file a prohibited second or successive petition as required by § 2244(b)(1).¹⁰ Davis did not appeal this ruling.

Davis's current petition also is considered a prohibited second or successive petition under 28 U.S.C. § 2244. Before it can be addressed by this Court, the petitioner must obtain authorization to file a second or successive petition from the United States Fifth Circuit Court of Appeals by making a *prima facie* showing to that court of one of the following exceptions:

- 1) the claim relies on a new rule of law, made retroactive to cases on collateral review by the United States Supreme Court, that was previously unavailable; or
- 2) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence, and
(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for the constitutional error, no reasonable factfinder would have found the petitioner guilty of the underlying offense.

28 U.S.C. § 2244(b)(3)(A).

A search of the records of the United States Fifth Circuit does not reflect that Davis has sought or obtained the required authorization. Until

¹⁰ *Id.*, R. Docs. 39-41.

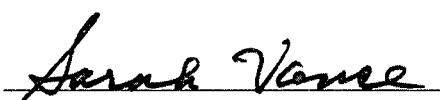
such time as Davis has done so, this Court is without jurisdiction to proceed.

Accordingly,

IT IS ORDERED that Lionel J. Davis a/k/a Lionel Bailey's Section 2254 petition be construed in part as a motion for authorization for the District Court to consider the second or successive claims raised therein. 0

IT IS FURTHER ORDERED that the petition be and hereby is **TRANSFERRED** to the United States Fifth Circuit Court of Appeals under the authority of 28 U.S.C. § 1631 for that Court to determine whether petitioner is authorized under 28 U.S.C. § 2244(b) to file the instant habeas corpus petition in this District Court.

New Orleans, Louisiana, this 26th day of December, 2023.


SARAH S. VANCE
UNITED STATES DISTRICT JUDGE

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

January 02, 2024

Mr. Lionel J. Davis
3024 St. Phillip Street
New Orleans, LA 70119

No. 24-30001 In re: Lionel Davis
USDC No. 2:23-CV-6700

Dear Mr. Davis,

The district court transferred your second or successive 28 U.S.C. § 2254 motion to this court to determine whether to allow your successive action. I advise you of the following matters, see *In re Tony Epps*, 127 F.3d 364 (5th Cir. 1997).

Under 28 U.S.C. § 2244(b)(3) you must first receive this court's permission before you can file such an action in district court.

You have **30 days** from the date of this letter to file with this court a motion for authorization to proceed in the district court, and to send the documentation below. The motion may not exceed 30 pages pursuant to Fed. R. App. P. 32(a)(7). Please use the case number shown above in your motion. If you fail to file a motion for authorization within this 30 day period, or properly request an extension of time, the clerk will enter an order dismissing your case without further notice.

If you wish to file a second or successive § 2254 petition in the district court, you must make a prima facie showing that you satisfy either of the two conditions found in 28 U.S.C. § 2244(b)(2):

- A. that your claim relies on a new rule of constitutional law, made retroactive by the Supreme Court, that was previously unavailable; **or**,
- B. the factual predicate for your claim could not have been discovered previously through the exercise of due diligence, **and** the facts underlying your claim, if proven by clear and convincing evidence, would be sufficient to establish that a reasonable trier of fact would not have found you guilty of the underlying offense.

You must attach the following documentation to your § 2254 motion to this court:

1. a copy of the proposed § 2254 petition you are requesting permission to file in the district court;
2. copies of all previous § 2254 petitions challenging the judgment or sentence received in any conviction for which you are currently incarcerated; all previous § 2241 petitions challenging the terms and conditions of your imprisonment;
3. any complaint, regardless of title, that was subsequently treated by the district court as a § 2254 motion or § 2241 petition;
4. all court opinions and orders disposing of the claims advanced in (2) above; and
5. all magistrate judge's reports and recommendations issued in connection with the claims advanced in (2), above.

Do not submit state court filings. This court does not require and will not address documents filed in a state court.

If, after due diligence and through no fault of your own, you cannot obtain the documents described above, you should submit an affidavit describing the steps you took to obtain them and explaining why you were unsuccessful. If possible, you should also identify by court, case name and case number any proceeding for which you cannot obtain the documents in (2) and (3) above.

The 30 day time limit within which this court must address your § 2254 motion will not begin to run until the clerk's office receives your response to this letter.

The original and one copy of the application must be mailed to:

U.S. Court of Appeals for the Fifth Circuit
Office of the Clerk
600 S. Maestri Place
New Orleans, LA 70130

Sincerely,

LYLE W. CAYCE, Clerk



By:

Majella A. Sutton, Deputy Clerk
504-310-7680

CC:

Ms. Carol L. Michel

United States Court of Appeals for the Fifth Circuit



No. 24-30001

A True Copy
Certified order issued Feb 12, 2024

IN RE LIONEL J. DAVIS, *also known as* LIONEL BAILEY,

Syle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Movant.

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

UNPUBLISHED ORDER

BEFORE ELROD, HAYNES, and DOUGLAS, *Circuit Judges*.

PER CURIAM:

Lionel J. Davis, formerly Louisiana prisoner # 118554, moves for authorization to file a successive 28 U.S.C. § 2254 application. He intends to challenge his 1987 convictions for first-degree robbery and simple robbery.

A movant seeking to file a successive § 2254 application must obtain prior authorization from this court. 28 U.S.C. § 2244(b)(3)(A). To obtain authorization, a prisoner must make a *prima facie* showing that either (1) his claims rely on a new, previously unavailable rule of constitutional law that the Supreme Court “made retroactive to cases on collateral review,” or (2) the factual predicate for his claims “could not have been discovered previously through the exercise of due diligence,” and the underlying facts, “if proven

and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable" trier of fact would have found him guilty of the underlying offense. § 2244(b)(2), (b)(3)(C).

To the extent that Davis's proposed claims were raised in his initial § 2254 application, we do not consider them, and they are DISMISSED. *See* § 2244(b)(1). Davis alleges that his convictions were unconstitutional in light of *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020). To the extent he asserts his motion is premised on a new rule of constitutional law, the Supreme Court has held that *Ramos* does not apply retroactively to cases on collateral review, so it does not provide a basis for authorization. *See* § 2244(b)(2)(A); *Edwards v. Vannoy*, 141 S. Ct. 1547, 1551-52 (2021). Further, Davis makes a conclusional assertion that his motion relies on a newly discovered factual predicate. However, he has not identified any newly available factual predicate or shown that any new facts, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable trier of fact would have found him guilty. *See* § 2244(b)(2)(B)(ii).

Thus, IT IS ORDERED that the motion for authorization is DENIED.