NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OVERILLE DENTON THOMPSON, JR.
Petitioner,

vs.

BOBBY LUMPKIN
Respondent.

PETITIONER'S RECORD OF APPENDICES ATTACHED TO THE
PETITION FOR WRIT OF CERTIORARI

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* The pages in this Record of Appendices are handwritten and numbered from A.1 to A.64. Any other number in the bottom or top right portion of each page only indicates that a given appendix has been used as an exhibit in a prior state or federal proceeding.

APPENDIX A

Decision of the United States Court of Appeals, Fifth Circuit
Denying Appellant's Motion for Certificate of Appealability
[USCA Doc.No.36 Filed: September 14, 2023]

USCA Case 23-20182 Document 36

United States Court of Appeals for the Fifth Circuit

No. 23-20182
Summary Calendar

OVERILLE DENTON THOMPSON, JR.,

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-1197

Before STEWART, CLEMENT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Overille Denton Thompson, Jr., Texas prisoner # 2068451, moves for a certificate of appealability (COA) to appeal the dismissal of his 28 U.S.C. § 2254 application challenging his convictions for possession of heroin with intent to distribute and possession of a firearm by convicted felon. The district court dismissed the § 2254 application as time barred. He

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

additionally seeks a COA to appeal the denials of his Federal Rule of Civil Procedure 59(e) motion as well as several other motions addressed below.

Although he baldly asserts that the district court should have granted his motion for a continuance, Thompson does not substantively address, and has therefore abandoned any challenge to, the district court's denial of that motion as moot. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993); *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Thompson's challenge to the denial of bail during the application's pendency in the district court is moot; we therefore DISMISS the appeal for lack of jurisdiction insofar as Thompson challenges the denial. *Cf. Bailey v. Southerland*, 821 F.2d 277, 278-79 (5th Cir. 1987).

To obtain a COA with respect to the denial of a § 2254 application,[1] a prisoner 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, 483 (2000). When a district court has denied a request for habeas relief on procedural grounds, the prisoner 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 jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484. To obtain a COA regarding the denial of his Rule 59(e) motion, he must show that jurists of reason could debate whether the district court abused its discretion by denying relief. *See Hernandez v. Thaler*, 630 F.3d 420, 428 (5th Cir. 2011). Thompson fails to make the necessary showings. Accordingly,

[1] Although Thompson separately asserts that the district court erred by denying several other motions that he filed contemporaneously with his § 2254 application, those pleadings, in relevant part, merely expound upon the arguments and claims raised in his § 2254 application and therefore need not be separately addressed.

we DENY a COA insofar as Thompson challenges the dismissal of his § 2254 application and the denial of his motion under Rule 59(e).

Finally, because the order denying Federal Rule of Civil Procedure 11 sanctions did not adjudicate the merits of his § 2254 application, Thompson does not require a COA to appeal the denial. *See Harbison v. Bell*, 556 U.S. 180, 183 (2009). We DENY as unnecessary the request for a COA with respect to the denial of this motion.

Thompson's contention that the district court did not sufficiently consider his Rule 11 arguments is conclusory, and he does not attempt to show that his motion for sanctions was substantively meritorious such that the district court abused its discretion by denying it. *See Friends for Am. Free Enterprise Ass'n v. Wal-Mart Stores, Inc.*, 284 F.3d 575, 577–78 (5th Cir.2002); *Yohey*, 985 F.2d 222. We therefore AFFIRM the denial of Thompson's Rule 11 motion.

APPENDIX B

Decision of the United States Court of Appeals, Fifth Circuit
Denying the Petition for Rehearing
[USCA Doc.No.53-2 Filed: February 6, 2024]

United States Court of Appeals for the Fifth Circuit

No. 23-20182

OVERILLE DENTON THOMPSON, JR.,

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-1197

ON PETITION FOR REHEARING

Before STEWART, CLEMENT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

APPENDIX C

Decision of the United States Court of Appeals, Fifth Circuit
Denying the Petition for Rehearing En Banc
[USCA Doc.No.64-1 Filed: March 25, 2024]

Case : 23-20182 Document : 64-1

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 25, 2024
Lyle W. Cayce
Clerk

No. 23-20182

OVERILLE DENTON THOMPSON, JR.,

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-1197

ON PETITION FOR
REHEARING EN BANC

Before STEWART, CLEMENT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

No member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), therefore, the petition for rehearing en banc is DENIED.

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APPENDIX F

Decision of the United States District Court,
Southern District of Texas, Houston Division
Dismissing Petitioner's §2254 Application With Prejudice and
Denying All Pending Motions
[USDC Doc.No.35 Filed: February 2, 2023]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

OVERILLE DENTON THOMPSON, JR., TDCJ #02068451,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. H-22-01197
BOBBY LUMPKIN,	§	
Respondent.	§	

MEMORANDUM AND ORDER

State inmate Overille Denton Thompson, Jr. (TDCJ #02068451) filed this petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his convictions and sentences in Harris County cause numbers 1445929 and 1445930. Doc. No. 1. Respondent has filed an Answer, asserting that Thompson's petition is barred by limitations. Doc. No. 29. Thompson filed a Reply. Doc. No. 33. The Court has carefully reviewed the pleadings, motions, and other filings in this case, and concludes that this petition must be DISMISSED as barred by the one-year statute of limitations found in 28 U.S.C. § 2244(d).

I. BACKGROUND AND PROCEDURAL HISTORY

On May 4, 2016, Thompson was convicted after a jury trial of possession of 4 to 200 grams of heroin with the intent to distribute and possession of a firearm by a felon in Harris County cause numbers 1445929 and 1445930. He was sentenced to 80 years' imprisonment on the drug charge and 10 years' imprisonment on the weapons charge.

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Thompson proceeded *pro se* on appeal, and on August 30, 2018, a state intermediate appellate court affirmed his convictions. *See Thompson v. State*, Nos. 14-16-00413-CR and 14-16-00414-CR, 2018 WL 4139038 (Tex. App.—Houston 2018, pet. ref'd). The state appellate court summarized some of the relevant background facts on appeal:

> Appellant was arrested in October 2014 and charged with two separate offenses: the first was possession of a controlled substance, and the second was possession of a firearm as a felon. Even though counsel was appointed to represent him in these cases, appellant filed numerous pro se motions as he remained in custody awaiting his trial. These motions sought various forms of relief, including a reduction in bail, a dismissal of charges based on the unlawfulness of a search, a hearing to determine the truthfulness of an affidavit, and the inspection of evidence. The trial judge did not rule on these motions. Instead, she noted in the margins of one of appellant's filings that appellant "is represented by counsel and motions have not been adopted."
>
> In July 2015, appellant filed two additional pro se motions to dismiss, this time based on the alleged denial of his right to a speedy trial. Aside from being filed in separate cause numbers (one in the drug case, and the other in the firearm case), the two motions were substantively identical. Appellant asserted in these motions that the State was delaying his trial because the State had recently charged him with a third offense for murder. Appellant then argued that the delay was unjustifiable because the first two charges were unrelated to the murder charge. Appellant accordingly sought a dismissal of the first two charges. The trial judge did not rule or conduct a hearing on either motion.
>
> In August 2015, appellant's trial counsel moved to withdraw because appellant claimed that counsel was colluding with the State against appellant's best interests. The trial judge granted the motion and appointed substitute counsel, who remained on the case through November 2015, when appellant successfully moved to represent himself.
>
> After electing self-representation, appellant never re-urged his speedy-trial motions. He did, however, move to disqualify the trial judge, to discover the identity of a confidential informant, and to obtain transcripts from the grand jury proceedings. The trial judge denied these and other motions.
>
> . . . .

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> When the scheduled trial date arrived, the State announced that it was not ready for trial because of a potential *Brady* issue that required additional processing. Appellant responded that he did not wish to go forward with trial that day either, which meant that the trial was reset. In advance of the new trial date, the State announced that it would only be trying the drug case and the firearm case (not the murder case as well).
>
> When the actual trial date arrived, appellant agreed to forgo self-representation, and his substitute counsel filled in again. Substitute counsel did not adopt appellant's pro se motions to dismiss.
>
> The jury convicted appellant in both the drug case and firearm case, and now appellant challenges both judgments of conviction in this pro se appeal.

Thompson v. State, No. 14-16-00413-CR, 2018 WL 4139038, at *1–2 (Tex. App. Aug. 30, 2018). The Texas Court of Criminal Appeals refused his petition for discretionary review on May 1, 2019. *Thompson v. State*, PDR Nos. PD-1352-18, PD-1353-18 (Tex. Crim. App. 2019). The Supreme Court denied Thompson's petition for a writ of certiorari on October 15, 2019. *Thompson v. Texas*, 140 S. Ct. 416 (2019).

Thompson filed his first set of post-conviction state habeas applications on June 6, 2016, but those were dismissed without written order on September 7, 2016, because his appeal was pending. *See Ex Parte Thompson*, WR-83,787-04 (Tex. Crim. App. Sept. 7, 2016);[1] *Ex Parte Thompson*, WR-83,787-05 (Tex. Crim. App. Sept. 7, 2016).[2]

On July 8, 2020, Thompson filed a "Petition for Protective Writ of Habeas Corpus" and "Motion to Stay Federal Habeas Limitations Period" in federal court. *See Thompson*

[1] Doc. No. 31-23 at Action Taken Sheet.

[2] Doc. No. 31-26 at Action Taken Sheet. He also filed other pre-trial petitions or motions, in WR-83,787-01, WR-83,787-02, and WR-83,787-03, that are not relevant here.

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v. Lumpkin, Civ. A. No. H-20-2395 (S.D. Tex. July 10, 2020). The court denied his petition and request for a stay because Thompson failed to file a protective petition setting forth meritorious claims for relief and failed to show good cause for a stay. *See id.* at Doc. No. 4 at 2-3. At that time, Thompson still had three months to file his state habeas application before the AEDPA deadline expired.

On October 9, 2020, Thompson filed another state habeas application, challenging both of his convictions in a single, combined application.[3] *See Ex Parte Thompson*, WR-83,787-06 (Tex. Crim. App. Jan. 27, 2021). On January 27, 2021, that application was dismissed as non-compliant based on Texas Rule of Criminal Procedure 73.2 because "multiple convictions may not be challenged in one form." *Id.*[4]

Thompson submitted another set of state applications that he signed on November 23, 2020,[5] to challenge his convictions. His state habeas application in cause number 1445930 was denied without written order on May 26, 2021. *See Ex parte Thompson*, WR-83,787-08 (Tex. Crim. App. May 26, 2021). He filed subsequent mandamus actions in

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[3] *See* Doc. No. 31-27 at 2-49, SHCR-06 at 2-46. In his cover letter to the Harris County District Clerk, he acknowledges that he is filing a combined application but requests suspension of the rules under Texas Rule of Appellate Procedure (TRAP) 2. *Id.* at 49, SHCR-06 at 46.

[4] *See* Doc. No. 31-28 at Action Taken Sheet (citing Tex. R. Crim. P. 73.2).

[5] *See* Doc. No. 31-40 at 42 (signature page for state application). Thompson represents that on November 23, 2020, he filed two separate state habeas applications in the same envelope, one meant as an amended application in 1445929-B and one meant as an amended application in 1445930-B. He alleges that the 1445929-B application was dated as filed October 15, 2020, but that the 1445930-B application as dated as filed on November 23, 2020, the date he signed the applications.

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state court that were also denied without written order. *See Ex parte Thompson*, WR-83,787-09 (Tex. Crim. App. Aug. 11, 2021); *Ex parte Thompson*, WR-83,787-10 (Tex. Crim. App. Oct. 20, 2021).

On February 22, 2022, Thompson signed his federal petition. Doc. No. 1 at 43. On March 11, 2022, his mother, Aquila E. Wiggins, certified that she received the petition from Thompson and sent it to the United States District Court for the Southern District of Texas, Corpus Christi Division, and to the Respondent. *Id.* at 43-44. The file stamp on Thompson's federal petition reflects that it was filed on March 22, 2022, in the Corpus Christi Division. Thompson contemporaneously filed the following pleadings: (1) "Petitioner's Federal Application for Protective Writ of Habeas Corpus," to which he attached Exhibits A-E, totaling 260 pages of documents (Doc. No. 2); (2) "Petitioner's Motion to Stay the State Habeas Proceedings and the Federal Limitations Period," to which he attached a 26-page "Declaration in Support of Petitioner's Motion to Stay the Habeas Proceedings and the Federal Habeas Limitations Period," (Doc. No. 3); (3) "Memorandum in Support of Petitioner's Motion to Stay the Habeas Proceedings and the Federal Habeas Limitations Period," to which he attached a 463-page "Record of Exhibits Attached to the Declaration I[n] Support of Petitioner's Federal Motion to Stay" (Doc. Nos. 4 & 4-1); and (4) "Motion for Leave to Proceed in Federal Court" (Doc. No. 5).

On April 13, 2022, this case was transferred to the Houston Division because Thompson obtained his convictions in Harris County. Doc. No. 9. In that same Order, the

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court denied all of Thompson's pending motions as moot subject to re-filing after transfer. *Id.* at 2.

On April 27, 2022, Thompson filed a "Notice of Re-Filing," indicating that he wished to re-file his previous motions and other documents in the Houston Division. *See* Doc. No. 10. The docket reflects that all of these documents were filed in the Houston Division in addition to his federal habeas petition with its exhibits and other attachments. *See* Doc. Nos. 1-5 and attachments thereto.

On July 29, 2022, Thompson filed a "Brief in Support of Petitioner's Motion for Release on Bail Pending Federal Habeas Review" (Doc. No. 11), a "Declaration IV in Support of Petitioner's Motion for Release on Bail Pending Federal Habeas Review" (Doc. No. 12), and a 220-plus page "Record of Exhibits Attached to Declaration IV in Support of Petitioner's Motion for Release on Bail Pending Federal Habeas Review" (Doc. No. 13 and attachments thereto).

On August 10, 2022, the Court ordered Respondent to answer. Doc. No. 14. Thompson subsequently filed a "Motion for Permission to File Oversized Motion or Brief in Support of His Protective Federal Habeas Petition." Doc. No. 17.

On August 24, 2022, Thompson filed a "Motion for Correction of the Inadequate Federal Procedures Employed in this case," contending that the Corpus Christi Division did not file some of his documents correctly. Doc. No. 15. He also states that he was not provided the one-page Notice of Exclusion that the Corpus Christi Division sends in habeas

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corpus proceedings and other kinds of cases.[6] He also requested a current docket sheet in a letter that was received on September 6, 2022. Doc. No. 18. He was provided a then-current docket sheet on September 11, 2022. *See* Doc. No. 19. On September 12, 2022, evidently before he received the docket sheet, Thompson filed a "Motion for Additional Correction of the Record Regarding the Improper Filing of His Motion for Release on Bail Pending Federal Habeas Review." Doc. No. 20.

Thompson filed a one-page "Motion for Release on Bail Pending Federal Habeas Review" that was dated June 20, 2022, but was postmarked on September 17, 2022, and received by the clerk on September 19, 2022. *See* Doc. No. 21 at 1-2 (envelope showing postal stamp cancellation on September 17, 2022, and receipt in the court on September 19, 2022). That same day, he filed a "Brief in Support of Petitioner's Motion for Release on Bail." Doc. No. 22. In his Notice of Amendment, he explains that his mother may have inadvertently omitted his one-page motion and asks the clerk to file each of the four parts of his motion separately. *See* Doc. No. 23. He also filed another copy of his Declaration IV in support of his motion for bail with over 200 pages of exhibits. Doc. No. 24 and attachments thereto. Thompson then filed an "Emergency Motion to Fix the Record by Prompt Video Conference," objecting to what he characterizes as the "severely deficient record" in this case. Doc. No. 25.

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[6] *See* Doc. No. 8. This informational notice explains that certain categories of cases, including federal habeas cases, are excluded from the requirements of a pretrial scheduling conference under Federal Rule of Civil Procedure 16 and the accelerated discovery procedures in Federal Rule of Civil Procedure 26.

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On November 7, 2022, Respondent filed his Answer, asserting, among other things, that Thompson's federal habeas petition was time-barred based on the one-year limitations period found in 28 U.S.C. § 2244(d). Doc. No. 29. Thompson filed a Reply, asserting that state-created impediments prevented him from timely filing his federal petition and arguing that statutory and equitable tolling should apply in this case. Doc. No. 33. He also seeks to proceed on the merits in federal court without being remanded to state court to exhaust his remedies, arguing that pursuing his habeas claims in state court would be futile. *Id.*; *see also* Doc. No. 5.

II. LEGAL STANDARDS

A. Federal Habeas Review of a State Court Conviction

The writ of habeas corpus provides an important, but limited, examination of an inmate's conviction and sentence. *See Harrington v. Richter,* 562 U.S. 86, 103 (2011) (noting that "state courts are the principal forum for asserting constitutional challenges to state convictions"). The Anti-terrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996), codified as amended at 28 U.S.C. § 2254(d), "imposes a highly deferential standard for evaluating state-court rulings and demands that state-court decisions be given the benefit of the doubt"; it also codifies the traditional principles of finality, comity, and federalism that underlie the limited scope of federal habeas review. *Renico v. Lett,* 559 U.S. 766, 773 (2010) (quotations omitted).

AEDPA "bars relitigation of any claim 'adjudicated on the merits' in state court, subject only to the exceptions in [28 U.S.C.] §§ 2254(d)(1) and (d)(2)." *Richter,* 562 U.S.

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at 98. "When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary." *Id.* at 99. For AEDPA to apply, a state court need not state its reasons for its denial, nor must it issue findings, nor need it specifically state that the adjudication was "on the merits." *Id.* at 98-99.

Regarding any claims that may have been exhausted, a federal habeas court can only grant relief if "the state court's adjudication of the merits was 'contrary to, or involved an unreasonable application of, clearly established Federal law.'" *Berghuis v. Thompkins,* 560 U.S. 370, 378 (2010) (quoting 28 U.S.C. § 2254(d) (1)). The focus of this well-developed standard "is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable—a substantially higher threshold." *Schriro v. Landrigan,* 550 U.S. 465, 473 (2007). Where a claim has been adjudicated on the merits by the state courts, relief is available under § 2254(d) *only* in those situations "where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with" Supreme Court precedent. *Richter*, 562 U.S. at 102.

B. <u>The One-Year Statute of Limitations</u>

Under the AEDPA, which governs this federal habeas corpus proceeding, a habeas corpus petition is subject to a one-year limitations period found in 28 U.S.C. § 2244(d), which provides as follows:

> (1) A 1–year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—
>
> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
>
> (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
>
> (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
>
> (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d).

III. DISCUSSION

Because Thompson challenges a state court judgment of conviction, the statute of limitations for federal habeas corpus review began to run at "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A). Thompson's direct review concluded and his conviction became final for the purposes of federal habeas corpus review on October 15, 2019, when the Supreme Court denied his petition for a writ of certiorari. *See*

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Roberts v. Cockrell, 319 F.3d 690, 694 (5th Cir. 2003) (holding that a state court conviction becomes final for the purposes of the AEDPA at the conclusion of direct review, *i.e.*, when either (1) the United States Supreme Court rejects a certiorari petition or rules on the merits or (2) time for seeking such review expires). The one-year statute of limitations began to run on that date for purposes of 28 U.S.C. §2244(d)(1)(A), making his federal petition due by October 15, 2020. Thompson's pending federal habeas corpus petition, filed on March 22, 2022,[7] is over seventeen months past the limitations period and is therefore time-barred unless an exception applies.

A. Statutory Tolling

The statute of limitations is tolled for the time during which a properly filed application for habeas corpus or other collateral relief is pending in the state courts. *See* 28 U.S.C. §2244(d)(2). Thompson's 2016 state habeas corpus applications were filed before his conviction was final and, therefore, were not "properly filed." *Larry v. Dretke*, 361 F.3d 890, 895 (5th Cir. 2004). "A habeas application is properly filed 'when its delivery and acceptance are in compliance with the applicable laws and rules governing filings.'" *Broussard v. Thaler*, 414 F. App'x 686, 688 (5th Cir. 2011) (quoting *Artuz v. Bennett*, 531 U.S. 4, 8 (2000)). Federal courts look to state law to determine whether a

[7] The record reflects that Thompson sent his filings to his mother, who then placed them in the mail. *See* Doc. No. 1 at 43-44; Doc. No. 2 at 57. Where, as here, a prisoner's pleadings were submitted through an outside intermediary or third party, the prison mailbox rule does not apply. *See Dison v. Whitley*, 20 F.3d 185, 187 (5th Cir. 1994) (citing *Wilder v. Chairman of the Cent. Classification Bd.*, 926 F.2d 367, 370 (4th Cir. 1991)); *see also Knickerbocker v. Artuz*, 271 F.3d 35, 37 (2nd Cir. 2001) (citations omitted). Even if the Court were to consider February 22, 2022, to be the date of filing, Thompson's petition is still untimely for the reasons stated in this opinion.

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state habeas application conforms to the state's procedural filing requirements. *Id.* (citing *Wion v. Quarterman*, 567 F.3d 146, 148 (5th Cir. 2009)). Because his 2016 applications were not properly filed, they do not toll the statute of limitations for purposes of 28 U.S.C. § 2244(d)(2). *See Artuz*, 531 U.S. at 8; *Larry*, 361 F.3d at 895.

Likewise, Thompson's October 9, 2020, combined application, which the state court found to be non-compliant because "multiple convictions may not be challenged in one form" under the state habeas procedures as interpreted by Texas state courts, was also not "properly filed" and does not toll the AEDPA limitations period. *See Artuz*, 531 U.S. at 8; *Larry*, 361 F.3d at 895. In addition, Thompson's state applications that he signed on November 23, 2020, were filed outside the AEDPA limitations period and do not toll the statute of limitations for purposes of 28 U.S.C. § 2244(d)(2). *See Palacios v. Stephens*, 723 F.3d 600, 604 (5th Cir. 2013) (holding that a state habeas petition filed outside of one year period "did not statutorily toll the limitation clock"); *Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000) (noting that the statute of limitations is not tolled by a state habeas corpus application filed after the expiration of the limitations period).[8] Likewise, his motions for a writ of mandamus that were filed outside of the limitations period do not toll the AEDPA limitations period. *See id.; see also Moore v. Cain*, 298 F.3d 361, 367 (5th Cir. 2002) (holding that an application for a writ of mandamus to compel the court to rule on a habeas petition was not a properly filed application for post-conviction relief and did

[8] Even if statutory tolling could apply from October 9, 2020, to May 26, 2021, for WR-83,787-08, which Thompson represents was an amended application in cause number 1445930-B, Thompson waited nearly ten additional months to file his federal petition after the Texas Court of Criminal Appeals denied that writ without written order.

not toll the AEDPA deadline). Therefore, he does not establish statutory tolling under §§ 2244(d)(1)(A) or (d)(2).

Thompson principally argues that the state impeded the filing of his state habeas application on time, and, therefore, he is entitled to statutory tolling under § 2244(d)(1)(B). To invoke statutory tolling under § 2244(d)(1)(B), a petitioner "'must show that (1) he was prevented from filing a petition (2) by state action (3) in violation of the Constitution or federal law.'" *Krause v. Thaler*, 637 F.3d 558, 560-61 (5th Cir. 2011) (quoting *Egerton v. Cockrell*, 334 F.3d 433, 436 (5th Cir. 2003)). The Fifth Circuit characterizes these requirements as "understandably steep." *Wickware v. Thaler*, 404 F. App'x 856, 862 (5th Cir. 2010).

Thompson contends that the State impeded his timely filing by: (1) using an "illegal litigation practice" when the Harris County District Attorney (DA) challenged his combined application as noncompliant under Rule 5 of the instructions for filing a state habeas application under Texas Code of Criminal Procedure 11.07; and (2) mishandling or misfiling his *pro se* post-conviction pleadings, which had the effect of facilitating "the DA's most relied upon procedural defense." *See* Doc. No. 1 at 13.

The instructions attached to the Texas state habeas application as "Appendix E, Court of Criminal Appeals of Texas Application for a Writ of Habeas Corpus Seeking Relief from a Final Felony Conviction Under Code of Criminal Procedure, Article 11.07" provide, in relevant part:

> 2. **Failure to follow these instructions may cause your entire application to be dismissed.**
>
> . . . .
>
> 4. You must **file** the entire application form, including those sections that do not apply to you. If any pages are missing from the form, or if the questions have been renumbered of omitted, your entire application may be dismissed as non-compliant.
>
> 5. You must make a separate application on a separate form for each cause number from which you seek relief. Even if the judgments were entered in the same court on the same day, you must complete a separate application form for each case number. If a case has multiple counts, include all the counts on one form.[9]

The State Habeas Corpus Record (SHCR) in WR-83,787-06 reflects that on October 9, 2020, Thompson filed a combined application, filling out pages 1-5 separately for each conviction and then asserting all of his grounds once for both of the convictions as combined grounds for relief. *See* Doc. No. 31-27 at 5-49, SHCR-06 at 2-46. In his cover letter attached to the application, he states:

> [D]ue to the tremendous burden of obtaining copies as a pro se prisoner, I respectfully request a suspension of the rule requiring the submission of a separate application for the two cause numbers for which I have been convicted under Texas Rule of Appellate Procedure 2. Or, in the alternative, I respectfully request under Rule 2 on my behalf that you please seek the Court's permission to make a copy of the penciled pages 6 Revised 2018 to 44 Revised 2018 for the submission of a second application in order that I may be in compliance.

Id. at 49, SHCR-06 at 46. Thus, at the time he filed his application with less than a week left on the AEDPA clock, he was aware that he was required to file a separate application

[9] *See* "Appendix E, Court of Criminal Appeals of Texas Application for a Writ of Habeas Corpus Seeking Relief from a Final Felony Conviction Under Code of Criminal Procedure, Article 11.07," Article 11.07 Writ Application Form Instructions, at i (emphasis in original).

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for each conviction. Instead of following the instructions attached to the form, he chose to file a combined application and risk requesting a suspension of the rules in his cover letter to the Clerk.

Thompson argues that the State, through the DA's office, engaged in unfair and illegal litigation practices when it raised the issue, which he acknowledges in his application papers, that his state application was non-compliant because he combined two convictions in one application. He contends that his motion to suspend the rules under Texas Rule of Appellate Procedure (TRAP) 2,[10] which he mentioned in his cover letter, should have been granted to allow him to proceed with his combined application. He further challenges the timing of the State's response, alleging that the DA failed to answer within the statutory 15 days, according to his own calculations. He contends that the state habeas court's order adopting the DA's findings of fact and conclusions of law and recommending dismissal of the application was "void or 'without effect'" because the State "waived" this issue by not answering within the 15-day window. Doc. No. 33 at 9.

Thompson's arguments have no basis in law or fact. Contrary to his contentions, according to Texas law, the DA does not give up or waive any argument or issue by not

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[10] Rule 2 of the Texas Rules of Appellate Procedure provides:

> On a party's motion or on its own initiative an appellate court may—to expedite a decision or for other good cause—suspend a rule's operation in a particular case and order a different procedure; but a court must not construe this rule to suspend any provision in the Code of Criminal Procedure or to alter the time for perfecting an appeal in a civil case.

Tex. R. App. P. 2.

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responding to his application. *See* Tex. Code Crim. P. art. 11.07 § 3(b) ("Matters alleged in the application not admitted by the state are deemed denied."); *see also Ex parte Smith*, 444 S.W.3d 661, 669–70 (Tex. Crim. App. 2014) (holding that, in light of "Article 11.07, § 3(b)'s language that arguably does not require that the State file an answer to an application at all", the State does not waive defenses if it does not file an answer). There is nothing "illegal" or "unfair" in the State asserting that Thompson's combined application was non-compliant. Even if the State had not filed an answer, the state habeas court could have recommended dismissal *sua sponte* based on non-compliance, or the Texas Court of Criminal Appeals could have dismissed it as non-compliant when it received the application that clearly combined his convictions in contravention of the explicit instructions not to do so and the express warning that such an application may be dismissed in its entirety as non-compliant. The state court's implied denial of Thompson's request for a suspension of the rules under TRAP 2 and its dismissal of his state application were decisions based solely in state law, and this Court, on federal habeas review, does not sit as a "'super' supreme court" for review of issues decided by state courts on state law grounds. *Smith v. McCotter*, 786 F.2d 697, 700 (5th Cir. 1986) (citations omitted).

Further, Thompson fails to show that his non-compliant habeas application would not have been dismissed by the Texas Court of Criminal Appeals regardless of whether and when the Harris County DA filed its answer. Filing two separate compliant

applications, which he failed to do, was solely within Thompson's control.[11] This first purported "impediment" is frivolous.

Likewise, his allegation that the Harris County District Clerk "misfiled" his documents, "facilitating" the DA's defense that his application was non-compliant, is frivolous. Regarding his complaint that he was not able to respond to the State's answer before the clerk transmitted his application and other materials, under Texas law, an applicant for a writ of habeas corpus under article 11.07 "bears the consequences of the failure to keep track of the status of his application." *Ex parte Pond*, 418 S.W.3d 94, 95 (Tex. Crim. App. 2013). The Texas Court of Criminal Appeals has explained that "[i]t is the applicant's responsibility to ensure that he has submitted all appropriate materials in a timely manner to the convicting court, preferably before those materials are transmitted to this Court, but necessarily before this Court takes action on the application." *Id.* Thompson's own failure to comply with Texas law and procedures states no federal claim, nor does it constitute a state impediment under § 2244(d)(1)(B). *See Larry*, 361 F.3d at 897 (holding that the State did not prevent the petitioner's timely filing even though it exceeded the time limits in Tex. Code Crim. P. art. 11.07 § 3(b), but rather, the petitioner's own action of failing to "properly file" his application that caused him to be untimely).

Thompson's reliance on *Critchley v. Thaler*, 586 F.3d 318, 320-21 (5th Cir. 2009), does not help him here. In *Critchley*, the Hays County District Clerk failed to file Critchley's state application in July 2003, or a second one he filed in February 2004, and

[11] There is no force to his argument that because he invoked TRAP 2 in his cover letter, he was entitled to the suspension of the rules and acceptance of his non-compliant application.

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did not file an amended application that he sent in December 2004 until April 2005. The Fifth Circuit held that the "state court's failure to process [Critchley's] application and others filed by Critchley, coupled with its apparent failure to process petitions filed by other prisoners constitutes a state-created impediment under § 2244(d)(1)(B)." *Id.* at 320. It found that, had the county clerk not ignored Critchley's application in 2003, it would have been timely filed, and under the "unique circumstances" in *Critchley*, the failure of the county clerk to file Critchley's and others' applications timely when it received them qualified as a state-created impediment. *Id.*

Unlike *Critchley*, the record reflects that the Harris County District Clerk promptly filed Thompson's application when it received it. Thompson does not state facts to show that any action by the Harris County District Clerk "rises to the level of a constitutional deprivation of due process as in *Critchley*," nor does he demonstrate that any action by the county clerk "*prevented* him from timely filing his federal habeas petition." *McNac v. Thaler*, 480 F. App'x 338, 343 (5th Cir. 2012) (emphasis in original) (holding that the clerk's delay in filing the state application for four months was not a state-created impediment where the application was filed within the limitations period and McNac failed to file his federal petition within the time remaining); *see also Wickware*, 404 F. App'x at 861-62 (holding that the Texas Court of Criminal Appeals' delay of nine months in dismissing the petitioner's non-compliant application did not justify equitable tolling); *Krause*, 637 F.3d at 560-61 (holding that a petitioner asserting a state-created impediment must show that the impediment "actually prevented him from timely filing his habeas

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petition"); *Madden v. Thaler*, 521 F. App'x 316, 320 (5th Cir. 2013) (holding that no state-created impediment existed where the state delayed issuing the mandate for 18 months).

Further, to the extent that Thompson contends that the Texas Court of Criminal Appeals' dismissal of his application(s) for non-compliance and failure to countenance his supplemental pleadings prevented him from timely filing, it was Thompson's failure to comply with the procedural rules for filing a state habeas application that prevented him from asserting his rights. *See Jones v. Lumpkin*, 22 F.4th 486, 492 (5th Cir. 2022) (holding that the petitioner was not entitled to tolling because his "plight is entirely self-inflicted and stems from his failure to comply with basic state procedural rules—about which he had notice"). The state procedural rules are printed on the two-page instruction appendix to the state habeas application; Thompson's action, and not any action by the State or state courts, caused him to miss the AEDPA deadline. *See id.*; *see also Jones v. Stephens*, 541 F. App'x 499, 504-05 (5th Cir. 2013) (not selected for publication) (quoting *Larry*, 361 F.3d at 897). Further, Thompson was aware of the rules regarding filing separate state applications for each conviction, having filed separate applications for each conviction in in 2016 and also acknowledging that his application was not compliant when he requested a suspension of the rules under TRAP 2 for his application to be accepted as compliant. Other than the inconvenience involved in copying his application twice to assert his claims under each conviction, Thompson does not provide any justification for why he failed to file his state application in compliance with all of the instructions. Therefore, he does not show that he diligently pursued his rights or was "'prevented in some extraordinary way

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from asserting his rights.'" *Jones*, 541 F. App'x at 503 (quoting *Cousin v. Lensing*, 310 F.3d 843, 848 (5th Cir. 2002)). The instructions attached to the Texas application are clear that any application that does not conform to the instructions may be dismissed as non-compliant. Thompson does not present facts to show that the state *prevented him* from filing his federal habeas petition within the one-year AEDPA deadline, and the record does not otherwise show that any unconstitutional state action impeded Thompson from filing for federal habeas relief before the expiration of the limitations period. Therefore, he is not entitled to statutory tolling under § 2244(d)(1)(B).

Further, there is no showing of a newly recognized constitutional right upon which the petition is based; nor is there a factual predicate for the claims that could not have been discovered previously if the petitioner had acted with due diligence. *See* 28 U.S.C. § 2244(d)(1)(C), (D). Accordingly, Thompson does not establish a statutory basis to save his late-filed claims.

B. Equitable Tolling

Equitable tolling is an extraordinary remedy that is sparingly applied. *See Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990). The Fifth Circuit has held that the statute of limitation found in the AEDPA may be equitably tolled, at the district court's discretion, only "in rare and exceptional circumstances." *Davis v. Johnson*, 158 F.3d 806, 811 (5th Cir. 1998). The habeas petitioner bears the burden of establishing that equitable tolling is warranted. *See Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). The Supreme Court has clarified that a habeas petitioner must show "(1) that he has been pursuing his

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rights diligently, and (2) that some extraordinary circumstance stood in his way." *Id.* A "garden variety claim of excusable neglect" does not support equitable tolling. *Lookingbill v. Cockrell*, 293 F.3d 256, 264 (5th Cir. 2002) (citations omitted). An unawareness of the law, lack of knowledge of filing deadlines, *pro se* status, or lack of legal training are not valid bases for equitable tolling. *Felder v. Johnson*, 204 F.3d 168, 171-72 (5th Cir. 2000) (citing cases). Further, attorney error or neglect does not constitute extraordinary circumstances to justify equitable tolling. *Cousin*, 310 F.3d at 848-49.

Thompson waited *nearly a year* — 358 days — after his conviction became final before filing his state habeas application on October 9, 2020, and even then, he did not comply with the state's procedural requirements. Instead, he risked filing an application that he knew was non-compliant with only one week to go before the deadline expired. Thompson has not met his burden to show that he pursued the post-conviction relief process with diligence. *See, e.g., Stroman v. Thaler*, 603 F.3d 299, 301-02 (5th Cir. 2010) (per curiam) (holding that petitioner did not pursue habeas relief with diligence where he waited seven months after his conviction as final to pursue a state application for a writ of habeas corpus, leaving him only five months after the state process to file his federal petition).

Thompson argues that his defense attorneys, Tommy LaFon and Randy Martin, failed to provide him with his complete client file, and, therefore, it took him almost a year to file his state habeas application. Yet, the record reflects that by January 2020, both

LaFon and Martin had provided Thompson with most of his client file.[12] Thompson does not explain what documents missing from his file, had they been obtained, were necessary to file his application in a timely fashion. *See, e.g., Robertson v. Davis*, No. 3:16-cv-2686, 2016 WL 6903749 (N.D. Tex. Oct 17, 2016) (rejecting petitioner's argument for equitable tolling because he did not show how the missing client file prevented him from timely filing his petition), *rec. adopted*, 2016 WL 6893662 (N.D. Tex. Nov. 21, 2016); *Polanco v. Stephens*, No. 7:15-cv-60, 2016 WL 2855876 (S.D. Tex. Feb. 4, 2016) (same), *rec. adopted*, 2016 WL 2839308 (S.D. Tex. May 13, 2016). He also does not explain why he waited nearly nine months after receiving the bulk of his client file in January 2020 to file his state application in October 2020. Thompson does not meet his burden to show that he was diligent and that an extraordinary circumstance stood in his way of timely filing. Therefore, he is not entitled to equitable tolling, and his petition is barred by the one-year statute of limitations under the AEDPA.

IV. Thompson's Protective Petition and Concurrent Motion to Stay

Thompson also filed a protective petition and motion to stay, asking the Court to stay this case and the AEDPA limitations period. In his protective petition, he argues, among other things, that "this Court has jurisdiction to stay the federal habeas limitations

[12] *See* Doc. No. 31-31 at 66, "Verification of Partial Client File, Vol. 1" (Thompson's verification that he received 543 pages of his client file from Randy Martin on January 13, 2020); *id.* at 168, "Verification of Partial Client File, Vol. 2" (Thompson's verification, on January 7, 2020, that he received 101 pages of his client file from Randy Martin that Martin represented were "all the papers in the Client File generated by first counsel Tommy LaFon that [Thompson] was entitled to receive.").

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period until 'the date on which an impediment to filing an application created by State action . . . is removed.'" *See* Doc. No. 2 at 10 (citing 28 U.S.C. § 2244(d)(1)(B)).

As set forth in detail above, there was no "impediment to filing an application created by State action" in this case, and Thompson does not otherwise show any basis for statutory or equitable tolling. Therefore, his application for a protective petition (Doc. No. 2) and his motion to stay (Doc. No. 3) are denied.

V. Motions for Correction of the Record

Thompson filed numerous motions, exhibits, and records in connection with his late-filed federal petition. Among other things, he seeks to correct the record in this case, contending that the Clerk's Office mis-filed some of his documents. Thompson believes that the Clerk excluded his "473-page Record of Exhibits Attached to the Declaration in Support of the pending Motion to Stay[], as well as possibly the related supporting 26-page declaration" and contends that "Court's clerk has impaired its full and fair resolution by interfering with Mr. Thompson's right to file evidence substantiating his entitlement to the requested stay." Doc. No. 33 at 1-2.

A careful review of the documents filed in this case indicates that all of the documents received by either the Corpus Christi Division or the Houston Division have been docketed as reflected on the docket sheet. For example, his Motion to Stay and his **463 pages** of exhibits are located in Document Numbers 4 and 4-1.[13]

[13] He claims that he filed **"473"** pages of exhibits. However, a close review of his actual "Record of Exhibits Attached to the Declaration Is [*sic*] Support of Petitioner's Motion to Stay," located at Doc. No. 4-1 in the docket, indicates that: "The Record is numbered from Pages 1 to **463**. For ease of reference, the page numbers are handwritten and located at the top right portion of each

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His complaint about his "11-page Memorandum in Support" of the pending "Motion for Leave to Proceed in Federal Court" and the related Declaration being missing is similarly baseless. His 11-page Memorandum in Support is located at Document 5, pages 8-18 (eleven pages). Likewise, his Declaration is located at Document 5, pages 2-7. Document number 5 is named, appropriately, "Motion for Leave to Proceed in Federal Court," which is the title Thompson placed on page one of the document. *See* Doc. No. 5 at 1. The docket sheet reflects all of the documents the district court has received, and most of those filings are mentioned in the Background and Procedural History section, *see* Section I., *supra*. There is no indication that any of his copious documents have been excluded from the record or filed incorrectly. Thompson's motions to correct (Doc. Nos. 15 & 20) and motion to fix the record (Doc. No. 25) are denied.

VI. Petitioner's Motion to Proceed in Federal Court and Motion for Bail

Thompson seeks leave to proceed in federal court on the merits without fully exhausting his state remedies. He also seeks release on bail while this Court decides his case. As explained above, this federal petition is time-barred. Therefore, his motion to proceed in federal court on the merits and his motion for release on bail are denied.

VII. 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. *See* 28 U.S.C. § 2253. A certificate of appealability will not issue unless the

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page." *See* Doc. No. 4-1 at 1. All 463 pages are present and numbered from 1 to 463. *See id.*

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petitioner makes "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), which 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 U.S. 274, 282 (2004) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Under the controlling standard, this requires a petitioner to show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Where denial of relief is based on procedural grounds, the petitioner must show not only that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right," but also that they "would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484.

A district court may deny a certificate of appealability, *sua sponte*, without requiring further briefing or argument. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000). For reasons set forth above, this court concludes that jurists of reason would not debate whether any procedural ruling in this case was correct. Therefore, a certificate of appealability will not issue.

VIII. CONCLUSION AND ORDER

Based on the foregoing, the Court **ORDERS** as follows:

1. Petitioner Overille Thompson, Jr.'s petition is **DISMISSED** with prejudice as barred by the one-year statute of limitations.

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2. Thompson's Application for a Protective Writ (Doc. No. 2) is **DENIED**.

3. Thompson's Motion to Stay (Doc. No. 3), Motion for Correction (Doc. No. 15), Motion to Correct the Docket (Doc. No. 20), Motion for Release on Bond (Doc. No. 21), and Motion to Fix the Record by Prompt Video Conference Hearing (Doc. No. 25) are **DENIED**.

4. Thompson's Motion for Leave to File an Oversized Motion or Brief in Support (Doc. No. 17) is **GRANTED**.

5. All other motions, if any, are **DENIED**.

6. A certificate of appealability is **DENIED**.

The Clerk will enter this Order, providing a correct copy to all parties of record.

SIGNED at Houston, Texas, this 1st day of February 2023.

ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE

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APPENDIX G

Decision of the United States District Court,
Southern District of Texas, Houston Division
Denying Rule 60(b) Motion for Relief From the Judgement
as a Rule 59(e) Motion to Alter or Amend the Judgement,
Petitioner's Motion for Continuance,
Petitioner's Motion for Rule 11 Sanctions,
and All Motions Previously Denied.
[USDC Doc.No.40 Entered: March 28, 2023]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

OVERILLE DENTON THOMPSON, JR., TDCJ #02068451, Petitioner,	§	
VS.	§	CIVIL ACTION NO. H-22-01197
BOBBY LUMPKIN, Respondent.	§	

ORDER

On February 1, 2023, the Court dismissed Petitioner Overville Denton Thompson's petition for a writ of habeas corpus with prejudice, issued a final judgment, and denied a certificate of appealability. Doc. Nos. 35 & 36. Pending are Thompson's motion for a continuance, motion for sanctions, and motion to alter or amend the judgment.[1] Doc. Nos. 34, 37 & 38.

Rule 59(e) motions "serve the narrow purpose of allowing a party 'to correct manifest errors of law or fact or to present newly discovered evidence.'" *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989) (citations omitted). Rule 59(e) cannot be used to introduce evidence that was available prior to the entry of judgment, nor should it

[1] The Court notes that the judgment was entered on February 2, 2023, and Thompson states that he submitted this motion to prison officials for mailing on March 2, 2023. Therefore, the Court liberally construes this motion under both Rule 59(e) and Rule 60(b). As explained above, his motion is denied under either rule.

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be employed to relitigate old issues, advance new theories or arguments that could have been raised before the entry of judgment, or secure a rehearing on the merits. *Templet v. HydroChem Inc.*, 367 F.3d 473, 478–79 (5th Cir. 2004) (citation omitted); *see also Sequa Corp. v. GBJ Corp.*, 156 F.3d 136, 144 (2d Cir. 1998) (holding that a party cannot attempt to obtain "a second bite at the apple" by presenting new theories or re-litigating old issues that were previously addressed). Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly. *Templet*, 367 F.3d at 479.

Under Rule 60(b), a district court "may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged . . . ; or (6) any other reason that justifies relief." FED. R. CIV. P. 60(b) (2015). Rule 60(b)(6) is "a residual or catch-all provision . . . to accomplish justice under exceptional circumstances." *Edwin H. Bohlin Co.*, 6 F.3d 350, 357 (5th Cir. 1993). Relief under Rule 60(b)(6) "will be granted only if extraordinary circumstances are present." *Hess v. Cockrell*, 281 F.3d 212, 216 (5th Cir. 2002) (citing *Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743, 743 (5th Cir. 1995) (quotation omitted)).

Thompson contends that the Court made a manifest error of law and fact when it concluded that his case was time-barred and denied his accompanying motions. However,

Thompson merely re-argues the same issues that the Court fully considered and rejected in its February 1, 2023, Memorandum and Order. He does not point to any new evidence to show a manifest error of fact or demonstrate that there was a manifest error of law regarding the Court's decision. He does not alter the Court's conclusion that his habeas petition was time-barred and that there was no state-created impediment to him filing his federal habeas petition on time. Consequently, he also fails to show that the Court's denial of his motions for a stay and to proceed in federal court was a manifest error of law or fact. Therefore, Thompson fails to show that dismissal of his petition with prejudice was erroneous or that the denial of his accompanying motions was improper.

Accordingly, the Court **ORDERS** as follows:

1. Petitioner's motion to alter or amend the judgment (Doc. No. 38) is **DENIED.**
2. Petitioner's motion for a continuance (Doc. No. 34) is **DENIED as MOOT.**
3. Petitioner's motion for sanctions (Doc. No. 37) is **DENIED.**
4. A certificate of appealability is **DENIED.**
5. All other pending requests or motions are **DENIED.**

The Court shall send a copy of this Order to the parties.

SIGNED at Houston, Texas, this 27th day of March 2023.

ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE

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