

April 9, 2024

# United States Court of Appeals for the Fifth Circuit

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United States Court of Appeals  
Fifth Circuit

No. 23-20565

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**FILED**

April 4, 2024

Lyle W. Cayce  
Clerk

WILLIE MEDINA,

*Petitioner—Appellant,*

*versus*

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

*Respondent—Appellee.*

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Application for Certificate of Appealability  
the United States District Court  
for the Southern District of Texas  
USDC No. 4:23-CV-334

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## UNPUBLISHED ORDER

Before JONES, HIGGINSON, and Ho, *Circuit Judges.*

PER CURIAM:

Willie Medina, Texas prisoner # 2146747, moves for a certificate of appealability (COA) to appeal the dismissal of his 28 U.S.C. § 2254 application as time barred. He contends that the district court erred by denying him equitable tolling and failing to require that the State provide him copies of certain state-court records. We do not consider his arguments,

*E.S., Appendix F.*

May 6, 2024

# United States Court of Appeals for the Fifth Circuit

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No. 23-20565

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United States Court of Appeals  
Fifth Circuit  
**FILED**  
April 30, 2024  
Lyle W. Cayce  
Clerk

WILLIE MEDINA,

*Petitioner—Appellant,*

*versus*

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

*Respondent—Appellee.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:23-CV-334

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## ON MOTION FOR RECONSIDERATION AND REHEARING EN BANC

### UNPUBLISHED ORDER

Before JONES, HIGGINSON, and Ho, *Circuit Judges.*

PER CURIAM:

The motion for reconsideration is DENIED. Because 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), the petition for rehearing en banc is DENIED.

*c.g. Appendix 5.*

**ENTERED**

October 31, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

WILLIE MEDINA, also known as  
GUILLERMO FLORES MEDINA,  
TDCJ #02146747,

Petitioner,

VS.

CIVIL ACTION NO. H-23-0334

BOBBY LUMPKIN,

Respondent.

MEMORANDUM AND ORDER

Petitioner Willie Medina, a/k/a/ Guillermo Flores Medina (TDCJ #02146747), filed this petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his 2017 state conviction and sentence. Doc. No. 1. Respondent has filed an Answer (Doc. No. 17), and Medina has filed a "Motion-Reply to State's Respondent's Answer" (Doc. No. 18). After reviewing the pleadings and court records in accordance with Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the Court concludes that the petition must be dismissed as barred by the one-year statute of limitations set forth in the Anti-terrorism and Effective Death Penalty Act (the "AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996).

e.g., "Appendix E."

## I. Background

On July 17, 2017, Medina was convicted of possession of a controlled substance after a jury trial in the 183rd Judicial District Court of Harris County, Texas, in cause number 1521065. Doc. No. 1 at 1-2. He is currently serving a 25-year sentence in the Texas Department of Criminal Justice - Correctional Institutions Division ("TDCJ") as the result of that conviction.

Id.

On December 18, 2018, the state intermediate appellate court affirmed his conviction. *See Medina v. State*, 14-17-00611-CR, 565 S.W.3d 868 (Tex. App. Houston [14th Dist.] Dec. 18, 2018, pet. ref'd). The Texas Court of Criminal Appeals refused his petition for discretionary review on March 27, 2019. *Id.*; *Medina v. State*, PD-0040-19 (Mar. 27, 2019). On September 26, 2022, Medina filed his state application for habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure that was denied without written order on December 21, 2022. *See Ex parte Medina*, WR-23,873-03 (Tex. Crim. App. Dec. 21, 2022).

On January 26, 2023, Medina placed the pending federal petition in the prison mailbox system. Doc. No. 1 at 15. Medina contends that he is entitled to relief for the following reasons: (1) the officers had no probable cause for the stop; (2) there was no search warrant for the car; (3) there was insufficient evidence

to support his conviction; (4) there was no traffic violation to justify the stop; (5) his prolonged detention was unlawful; (6) he received ineffective assistance of trial counsel for failing to object to the judge verbally answering the bailiff about a jury question; and (7) the trial judge acted wrongfully and abused his discretion. Doc. No. 1 at 5-8.

Respondent contends that Medina's petition should be dismissed with prejudice as barred by the statute of limitations. Medina claims that he is entitled to tolling because (1) he did not receive notice of the Texas Court of Criminal Appeals' ruling on his petition for discretionary review until May 26, 2021; and (2) he was in federal custody from July 2021 to May 2022 and did not have his legal materials to complete his state habeas application at that time.

## II. The One-Year Statute of Limitations

This federal habeas corpus proceeding is governed by AEDPA, which imposes a one-year limitations period on federal petitions for habeas corpus. *See* 28 U.S.C. § 2244(d). Because Medina 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). His convictions were final ninety days later, on June 25, 2019, when the time to seek a writ of certiorari from the Supreme Court expired. *See Roberts v. Cockrell*, 319 F.3d 690, 694 (5th Cir. 2003). The pending federal habeas corpus petition, filed on January 26, 2023, was filed three-and-a-half years after his conviction became final and is therefore time-barred unless an exception applies.

A. Statutory Tolling

A properly filed state application for habeas corpus tolls the limitation period. 28 U.S.C. § 2244(d)(2). However, even if the Court tolls the time from when Medina's conviction was final in 2019 to May 26, 2021, when he received actual notice of the refusal of his petition for discretionary review, Medina waited an additional 16 months, until late September 2022, to file his state application for habeas corpus. Therefore, Medina filed his state application after the statute of limitations expired, and his late application does not toll the statute of limitations for purposes of 28 U.S.C. § 2244(d)(2). *See Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000) (noting that a state habeas corpus application filed after the expiration of the limitations period does not toll the statute of limitations). Medina does not show statutory tolling based on a properly filed state application for collateral

review.

In addition, Medina fails to show that any state action impeded him from filing his petition in a timely manner. *See* 28 U.S.C. § 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). Therefore, Medina does not present any statutory basis to save his late-filed claims.

B. Equitable Tolling

The AEDPA statute of limitations 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). A "'[habeas] petitioner' is 'entitled to equitable tolling' only if he shows '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing.'" *Holland v. Florida*, 130 S. Ct. 2549, 2562 (2010) (quoting *Pace v. DiGuglielmo*, 125 S. Ct. 1807, 1814 (2005)). The habeas petitioner bears the burden of establishing that equitable tolling is warranted. *See Howland v. Quarterman*, 507 F.3d 840, 845 (5th Cir. 2007) (citing *Alexander v.*

Cockrell, 294 F.3d 626, 269 (5th Cir. 2002)).

Medina represents that the Texas Court of Criminal Appeals did not notify him regarding its refusal of his petition for discretionary review until May 26, 2021. *See* Doc. No. 1-1 at 20, 23-26. However, he did not file his state application for habeas corpus until September 26, 2022, well more than a year after he received such notice. *See Ex Parte Medina*, Cause No. 1521065-A (183rd Dist. Ct., Harris County, Tex. 2022); Doc. No. 16-29 at 20, State Habeas Corpus Record (SHCR) at 0017. He also states that the United States Marshals Service transferred him to federal custody in July 2021, and he did not return to TDCJ until May 2022, but he fails to show that being in federal custody, as opposed to state custody, is an "extraordinary circumstance" that prevented him from timely filing his application.

Further, Medina does not explain his failure to file his state application during the two months before he entered federal custody (from May 2021 to July 2021) or why he waited an additional four months after returning to state custody (from May 2022 to September 2022) to file his state application.

Assuming that Medina is entitled to equitable tolling for the delay in Texas Court of Criminal Appeals' notice to him that his petition for discretionary review had been refused, *see Hardy v. Quartermann*, 577 F.3d 596 (5th Cir. 2009), he does not show that he

thereafter exercised due diligence to file his state application without delay. He does not establish that being in federal custody prevented him from filing his state application or that he acted diligently after he received notice. *See Padilla v. Davis*, No. 3:17-CV-227, 2018 WL 1033262, at \*3 (S.D. Tex. Feb. 21, 2018) (holding that the petitioner failed to show due diligence where, as here, he was transferred to federal custody and does not account for his other delays in filing); *see also Felder v. Johnson*, 204 F.3d 168, 171-173 (5th Cir. 2000) (holding that proceeding *pro se*, inadequacies in prison library, lack of knowledge of filing deadlines, and ignorance of the law are not rare and exceptional circumstances that warrant equitable tolling); *Turner v. Johnson*, 177 F.3d 390, 392 (5th Cir. 1999) (explaining that the lack of familiarity with legal process or representation and illiteracy are not circumstances that justify equitable tolling). Medina does not provide a valid reason for his delay in filing a state application for more than a year after he received actual notice that his petition for discretionary review had been refused. He fails to show that he is entitled to equitable tolling under these circumstances. Accordingly, his petition is barred by the one-year statute of limitations and must be dismissed.

### III. Certificate of Appealability

A certificate of appealability from a habeas corpus proceeding will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard "includes showing 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." Slack v. McDaniel, 120 S. Ct. 1595, 1603-04 (2000) (internal quotations and citations omitted). Stated differently, the petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Id.; Beazley v. Johnson, 242 F.3d 248, 263 (5th Cir. 2001).

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, 120 S. Ct. at 1604.

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 or whether the petition was properly dismissed as untimely. Therefore, a certificate of appealability will not issue.

IV. ORDER

Based on the foregoing, it is hereby

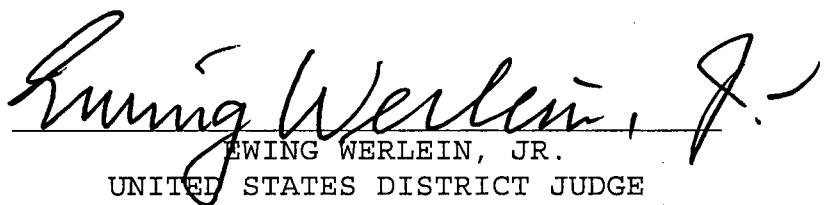
ORDERED that this petition is DISMISSED with prejudice as barred by the one-year statute of limitations; it is further

ORDERED that a certificate of appealability is DENIED; and it is

ORDERED that all other pending motions, if any, are DENIED.

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

SIGNED at Houston, Texas, on this 31<sup>st</sup> day of Oct., 2023.

  
Ewing Werlein, Jr.  
EWIN WERLEIN, JR.  
UNITED STATES DISTRICT JUDGE

**ENTERED**

November 15, 2023  
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

WILLIE MEDINA, also known as  
GUILLERMO FLORES MEDINA,  
TDCJ #02146747,

Petitioner,

VS.

CIVIL ACTION NO. H-23-0334

BOBBY LUMPKIN,

Respondent.

ORDER

On October 31, 2023, the Court dismissed Petitioner Willie Medina's petition with prejudice as untimely. Doc. No. 19. In that same Order, the Court denied a certificate of appealability. Id. Medina has filed an "Objection to Dismiss[al] of Habeas 2254 Motion for Relief and Reconsider[ation]" under Federal Rules of Civil Procedure 59(e) and 60(b)(2). See Doc. No. 21.

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 be employed to relitigate old issues, advance new theories or arguments that could have been raised

*e.g., Appendix E.*

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) (2023).

Medina seeks reconsideration of the Court's dismissal, contending that he is innocent and has new evidence that his trial judge abused his authority when he allegedly falsified the jury's question form. He contends that the one-year statute of limitations does not apply to this case because he is innocent and

because the Houston Police Department officers violated his constitutional rights. Doc. No. 21 at 1. He claims that he has new evidence under Federal Rule of Civil Procedure 60(b)(2) and states that he has been pursuing his rights diligently.

Nonetheless, Medina does not submit any "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)" as would be required to proceed under Rule 60(b)(2). He does not show that any other provision of Rule 60(b) applies or that extraordinary circumstances exist to justify reconsideration of his case under Rule 60(b)(6).

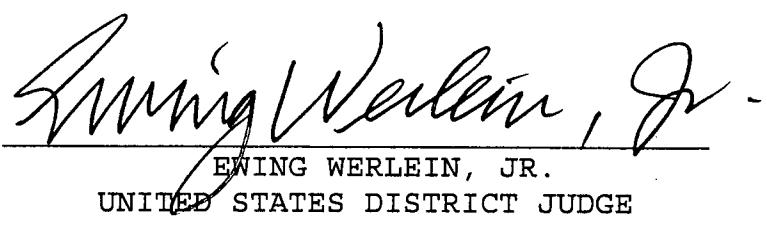
To the extent that he re-asserts arguments that the Court previously considered and rejected in its October 2023 Memorandum and Order, Rule 59(e) is not for relitigating old issues, advancing new theories or arguments that could have been raised before the entry of judgment, or securing a rehearing on the merits. *See Templet*, 367 F.3d at 478-79. Nothing in his motion alters the Court's conclusion that the petition should be dismissed as barred by the one-year statute of limitations set forth in the Anti-terrorism and Effective Death Penalty Act (the "AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996).

Therefore, it is hereby  
ORDERED that the petitioner's "Objection to Dismiss[al] of  
Habeas 2254 Motion for Relief and Reconsider[ation]" under Federal  
Rules of Civil Procedure 59(e)(c) and 60(b)(2) (Doc. No. 21) is  
DENIED; it is further

ORDERED that a certificate of appealability is DENIED; and it  
is

ORDERED that all other pending motions, if any, are DENIED.  
The Clerk's Office will enter this Order, providing a correct  
copy to all parties of record.

SIGNED at Houston, Texas, on this 15<sup>th</sup> day of Nov., 2023.

  
Ewing Werlein, Jr.  
EWING WERLEIN, JR.  
UNITED STATES DISTRICT JUDGE