

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 29, 2024

Lyle W. Cayce
Clerk

JOSHUA WILEY MITCHELL,

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 Eastern District of Texas
USDC No. 4:20-CV-811

ORDER:

Joshua Wiley Mitchell, Texas prisoner # 02166529, seeks a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 application challenging his convictions for aggravated assault with a deadly weapon and family violence assault. He contends that (i) he received ineffective assistance when his counsel failed to request, in connection with a retrospective competency trial, that the trial court order an examination of his competency or retain an expert to conduct a competency examination; and (ii) his due process rights were violated when the trial court failed to

order a competency examination in connection with the retrospective competency trial.

In his COA pleadings, Mitchell also contends that his counsel was ineffective for failing to enter into evidence his mental health records in connection with the retrospective competency trial. Because Mitchell raises this claim for the first time in his COA pleadings, this court lacks jurisdiction to consider it. *See Black v. Davis*, 902 F.3d 541, 545-46 (5th Cir. 2018). Moreover, because he fails to reprise his claim that his counsel was ineffective for failing to file a motion to recuse the trial judge from the retrospective competency trial, that claim is abandoned. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1995)

Because Mitchell otherwise fails to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see Slack v. McDaniel*, 529 U.S. 473, 484 (2000), a COA is DENIED. Additionally, Mitchell’s motion for an evidentiary hearing and motion to proceed in forma pauperis on appeal are DENIED.

/s/ James E. Graves, Jr.

JAMES E. GRAVES, JR.
United States Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JOSHUA WILEY MITCHELL, #02166529 §
VS. §
DIRECTOR, TDCJ-CID §
 §

CIVIL ACTION NO. 4:20cv811

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation concluding that the petition for writ of habeas corpus should be denied and dismissed with prejudice. No objections were timely filed.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. The Court concludes that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is accordingly **ORDERED** the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**.

It is further **ORDERED** that all motions not previously ruled on are hereby **DENIED**.

SIGNED this 13th day of December, 2023.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE