

APPENDIX "A"

CLARK V. COLLIER, NO. 24-50569

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 6, 2024

Lyle W. Cayce
Clerk

No. 24-50569

REGINALD LEE CLARK,

Petitioner—Appellant,

versus

BRYAN COLLIER, *Executive Director, Texas Department of Criminal Justice*; BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice, Correctional Institutions Division,*

Respondents—Appellees.

Application for Certificate of Appealability
the United States District Court
for the Western District of Texas
USDC No. 6:24-CV-179

ORDER:

Reginald Lee Clark, Texas prisoner # 1720809, moves for a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2254 petition, which challenges his 2011 theft conviction, as time-barred under 28 U.S.C. § 2244(d). He also challenges the denial of his Federal Rule of Civil Procedure 59(e) motion. With the benefit of liberal construction, Clark argues that he can overcome the statute of limitations because: (1) his claims did not accrue until April 29, 2023, when he discovered the article written by the prosecutor in his case; (2) he acted

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diligently and timely filed his state habeas application on August 21, 2023, and he timely filed his federal petition on April 3, 2024, after the Texas Court of Criminal Appeals denied his state habeas application; and (3) he is entitled to equitable tolling of the limitations period because he did not discover the factual basis of his claims until he discovered the prosecutor's article on April 29, 2023.

In his COA filings in this court, Clark argues for the first time that the dismissal of his § 2254 petition as time-barred violated his due process rights by arbitrarily taking away his fundamental right to have his habeas claims heard. Because he did not raise this argument in the district court, it will not be considered. *See Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003).

To obtain a COA to appeal the district court's dismissal of his § 2254 petition on the procedural ground of time bar, Clark must show both "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).

Clark has not made the requisite showing. *See id.* Accordingly, Clark's COA motion is DENIED.


IRMA CARRILLO RAMIREZ
United States Circuit Judge

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CLARK V. COLLIER, 6:24-CV-00179-ADA

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

REGINALD LEE CLARK #1720809

V.

BRIAN COLLIER

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§

W-24-CA-179-ADA

ORDER

On June 13, 2024, the Court dismissed Petitioner's application for habeas corpus as time-barred. Petitioner now files a Motion for Reconsideration that has been construed as a Motion to Amend or Alter Judgment Under Rule 59(e) (#10).

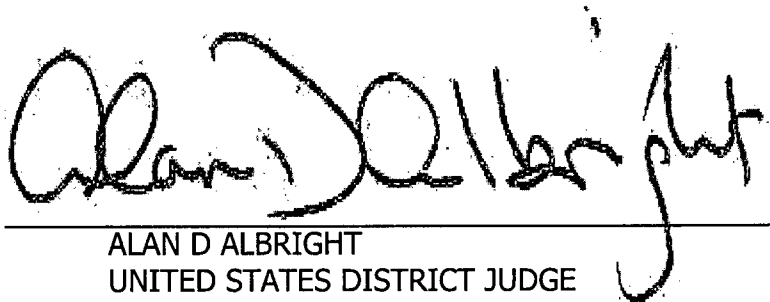
A motion to alter or amend the judgment under Rule 59(e) "must clearly establish either a manifest error of law or fact or must present newly discovered evidence." *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990). Petitioner explains that he believes the Supreme Court's decision in *Corner Post, Inc. v. Bd. of Governors of the Fed. Res. Sys.*, 603 U.S. ___, No. 22-1008, 2024 U.S. LEXIS 2885 (2024) in some way indicates that his habeas petition should not be barred by the statute of limitations. *Corner Post* addressed issues related to the statute of limitations for suits brought against federal agencies pursuant to the Administrative Procedure Act. The *Corner Post* decision is wholly irrelevant to Petitioner's application for habeas corpus or the statute of limitations for habeas corpus applications. The Court has considered Petitioner's arguments and found them lacking and determined that a dismissal was appropriate.

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It is therefore **ORDERED** that Petitioner's Motion to Amend or Alter Judgment Under Rule 59(e) (#10) is **DENIED**.

It is finally **ORDERED** that a certificate of appealability is **DENIED**, as reasonable jurists could not debate the denial of the petitioner's motion on substantive or procedural grounds, nor find that the issues presented are adequate to deserve encouragement to proceed. *Miller-Ei v. Cockrell*, 537 U.S. 322, 327 (2003).

SIGNED on July 16, 2024



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

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