No. #25A30

BEFORE THE
SUPREME COURT OF THE UNITED STATES

* * * * * * *

IN RE:

Humberto Andres Maldonado,

PETITIONER.

* * * * * * *

APPLICATION FOR A CERTIFICATE OF APPEALABILITY

* * * * * * * *

To: Samuel Anthony Alito, Jr.
Justice for The United States Court of Appeals
For The Fifth Circuit Courts;

COMES NOW, Humberto Andres Maldonado, hereinafter referred to as the Petitioner in the above-entitled and numbered styled case, and in propria persona, pursuant to Title 28 U.S.C., Section 2253(c)(1), fiies and tenders this, his Application for A Certificate of Appealability, and for cause will advance the following in support thereof, to-wit:

I.
STATEMENT OF THE CASE

This is a federal habeas corpus proceeding before the United States District Court for the Southern District of Texas, Houston Division, in Case No. #4:22-CV-04401, Styled: Humberto Andres Maldonado v. Bobby Lumpkin, Director, Texas Department of Criminal Justice-Correctional Institutions Division.

The district court delivered its Memorandum & Order on October 31, 2023, dismissing Petitioner's federal habeas petition with

prejudice as barred by the 1-year statue of limitation and sua sponte denied a certificate of appealability. (Appendix A).

The district court in conjunction with the Memorandum & Order entered a Final Judgment in this case on October 31, 2023.

The district court denied Petitioner's Motion for Reconsideration on April 04, 2024. (Appendix B).

On March 20, 2025, the United States Court of Appeals for The Fifth Circuit denied Petitioner's request for a COA in Case No. #24-20193, Styled: Humberto Andres Maldonado v. Eric Guerrero, Director, Texas Department of Criminal Justice-Correctional Institutions Division. (Appendix C).

II.
STATEMENT REGARDING JURISDICTION

Jurisdiction is invoked pursuant to Title 28 U.S.C., Section 2253(c)(1), and Rule 22 of the Supreme Court Rules. Cf., Barksdale v. Marshall, 221 L.Ed.2d 577 (2025).

III.
STANDARD OF REVIEW

Unless a circuit justice or judge issues certificate of appealability (COA), an appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court. Title 28 U.S.C., Section 2253(c)(1)(A).

A COA may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right. Title 28 U.S.C., Section 2253(c)(2).

Although, the statute itself is straight forward Section 2253(c)(2) has been interpreted to mean that for a COA to issue

a habeas petitioner must demonstrate not only that reasonable jurists could debate whether the district court was correct in its procedural ruling, but also that reasonable jurists could find it debatable that the petition facially valid claim of the denial of a constitutional right. Slack v. McDaniel, 120 S.Ct. 1595 (2000). Upon review the court resolves doubts whether to grant a COA from a district court's denial of a federal habeas petition in the petitioner's favor. Hill v. Johnson, 210 F.3d 481 (5th Cir. 2000).

A COA is is a jurisdictional prerequisite, and until a COA has been issued, a federal appellate court lacks jurisdiction to rule on the merits of the appeal from a habeas petitioner. Miller-El v. Cockrell, 123 S.Ct. 1029 (2003). The habeas petitioner need not convince a judge, or as in this case a Justice, that he will prevail, but as in this case reasonable jurists could debate whether the district court was correct in its procedural ruling and reasonable jurists could find it debatable that the petition states a valid facial claim of the denial of a constitutional right... Slack.

IV.
ISSUES PRESENTED

Issue No. 1: Petitioner was deprived of his rights to Due Process because the district court entered an adverse judicial decision without first assuring that he was notified of the judicial action to be taken against him and opportunity to be heard.

Issue No. 2: The district court erred in its determination that Petitioner did not meet the requirements for statutory tolling of the 1-year limitation period because the district court fail to consider and address the nature of Petitioner's newly discovered evidence that formulated the predicate for the claims.

V.
ARGUMENT

Unlike review upon certiorari where the question before the Court is whether the court of appeals should have issued a COA from the district court's determination of the case; or whether the issue presented is adequate to deserve encouragement to proceed further. Miller-El, Supra. The question is whether reasonable jurists could debate whether the district court was correct in its procedural ruling. Slack, Supra.

A habeas corpus petitioner who seeks to appeal the denial of his federal habeas petition may do so only if "a circuit justice or judge issues a COA." Title 28 U.S.C., Section 2253(c)(1).

Several circuits have interpreted this requirement to mean that a COA must issue so long as "one of the judges, or as in this case the Justice whom the application was addressed, or Justices provided that the application is submitted to them for consideration, vote to grant it. Miller-El, Supra, Barksdale v. Marshall, 221 L.Ed.2d 577 (2025), and Shockey v. Vandergriff, 145 S.Ct. 894 (2025).

Petitioner filed a federal habeas petition challenging his State conviction for the alleged offense of Murder. After pleading guilty, punishment was assessed at 45 years confinement in the Texas Department of Criminal Justice-Correctional Institutions Division.

Pertinent to this application before the district court, Petitioner presented for federal habeas relief, that: (1) His constitutional rights were violated because the State suppressed

evidence consisting of a Video-Tape Recording of Juan Carlos Medrano, and the written statement made by Uriel Garcia that was Video-Taped, that supported a claim of Self-Defense or the lesser-included offense of Murder, notwithstanding a claim of Actual-Innocence. (2) He was deprived of his constitutional right to effective assistance of counsel (IAC) because trial counsel fail to conduct an adequate investigation in to the facts of the case, in the matter of the suppressed evidence, and had he been informed of such evidence, he would have never entered a plea of guilt.

(1)

The district court dismissed the petition sua sponte as time-barrd under the provisions of Title 28 U.S.C., Section 2244(d)(1). (Appendix A).

The district court noted that it could dismiss the petitioner as untimely on its own initiative where it gave fair notice to the petitioner and an opportuntity to respond. Day v. McDonough, 126 S.Ct. 1675 (2006). The district court held that the form petition that Petitioner signed have him fair notice of the 1-year statute of limitation found in the Antiterrorism Effective Death Penalty Act of 1996 (AEDPA), setting out Section 2244(d) in full, and asked him to explain why his petition was not time-barred. The district court held that Petitioner cited his earlier habeas application, filed in 2012, as possibly toling the statute of limitations and claims that the State withheld evidence that shows that he acted in self-defense

and he is actually innocent.

Petitioner filed a Motion for Reconsideration pursuant to Rule 59(e) of the Federal Rules of Civil Procedure arguing that his rights to due process were violated because he did not have notice and an opportunity to be heard regarding the timeliness issue. (Appendix B). The district court stated, that in January 2023, full - nine months before dismissing this case, it ordered Petitioner to show cause for why this case was not barred by the statute of limitations and, that Petitioner no claims never to have received that order, even though such was never returned to sender as undeliverable. In addition, the form petition Petitoner submitted as his petition set forth the AEDPA statute of limitations in Section 2244(d) in full and required Petitioner to state why the 1-year statute of limitation did not bar his petition and, that Petitioner provided his reasons for why he believed his petition was not barred. Thus, Petitioner's complaint was frivolous.

Petitioner argued that the only notification provided to him was that if the judgment of conviction became final over 1-year ago, he must explain why the 1-year statute of limitation as contained in Section 2244(d) did not bar the petitioner. However, he was not informed that the petition could be dismissed if the judgment of conviction became final over one (1) year ago, or that certain answers would lead to the dismissal of the petition. Petitioner argued that the form was not made to elicit any information concerning the facts enumerated in Section

2244(d)(1)(A)-(D), or (d)(2). Petitioner furthered, that the form did not provide him with enough information, and he was not allowed to make any viable arguments to show that the petition was not time-barred which he was entitled. Citing, Acosta v. Artuz, 221 F.3d 117 (2nd Cir. 2000).

In Acosta, the court of appeals vacated and remanded the judgment of the district court, holding that although the district court could raise sua sponte the affirmative defense of failure to comply with the ADEPA's statute of limitation, it had to provide the habeas petitioner with notice and an opportunity to be heard before dismissing the petition on such grounds. The court furthered, that the AEDPA's statute of limitation is not jurisdictional, and notably in the ADEDPA or the Rules Governing Title 28 U.S.C., Section 2254 proceedings indicate the burden of pleading the statute of limitation has been shifted to the habeas petitioner. It is an affirmative defense.

The Acosta court hdeld that the standard forms given to federal habeas petitioners are not designed to elicit any information concerning relevant factors enumerated in Section 2244(d)(1), and thus, in such circumstances, prior notice and an opportunity to be heard is essential. Unless it is unmistakably clear from the facts alleged in the petition, considering all of the special circumstances enumerated in Section 2244(d)(1), equitable tolling, and any other fact relevant to the timeliness of the petition, that the petition is untimely, a court may not dismiss the petition for untimeliness without providing the petitioner

notice and opportunity to be heard. One of the essential elements of Due Process as implied by the 14TH Amendment to the United States Constitution is the right to be heard, that consist of the right to present evidence and have judicial findings based on that evidence.

It is noted that the district court hinged its determination, not only on the form requirements, but also on the factual matter that the Order To Show Cause (OTSC) was never returned to the Clerk undelivered. Although, the OTSC was entered on January 23, 2023, there is nothing contained on the Docket Sheet that Petitioner was notified. Cf., Dkt. No. #2 and #3; noting that "Party and Parties notified." (Appendix D). Further, there is no reference made as to the date of mailing that the "Party and Parties" were notified.

Non-receipt is difficult to prove conclusively, however, no so in the Petitioner's case since all incoming legal mail is log in by Prison Officials, that the district court could have obtained as requested by the Petitioner in his Motion for Reconsideration. In view of Petitioner's verified Motion for Reconsideration (MTR), it was argued that Prison Mail Room Records provided ample evidence that he did not receive the MTSC. Generally all a party can do seeking to demonstrate non-receipt is normally submit affidavits, or as in this case a verified MTR of non-receipt of the OTSC. Actual receipt on the other hand is very difficual to prove or show without using Certified Mail. As nothing was returned to the Clerk, providing

the OTSC was mailed to Petitioner, the district court was entitled to assume receipt.

Petitioner argues that his verified MTR was sufficient to rebut the presumption of receipt, and where a district court requires extensive evidence to rebut the presumption or continues to rely upon the presumption after it is rebutted, the district court effectively erects an irrebuttable and insurmountable barrier as the district court did here in this case.

Given Petitioner's specific fact denial of non-receipt of the OTSC, the district court denied the MTR upon the continuing validity of the presumption of receipt. The district court would not have erred if it had resoleved the question of receipt against the Petitioner by carefully weighing the evidence. Such a resolution would have been a factual determination, upon which the district court made no such determination, relying instead on an expansive view of the deflated presumption.

Therefore, in view of the decision delivered in Acosta and underlying argument, and this Court's decision in Day, Petitioner has clearly shown and demonstrated that reasonable jurists could debate whether the district court's was correct in its procedural ruling dismissing the case as time-barred without providing Petitioner with notice and opportunity to be heard before dismissing the petition as time-barred. Thus, Petitioner is entitled to the granting of a COA, or such order that the case be remanded allowing Petitioner to show cause why the petition should not be dismissed as time-barred.

(2)

The district court held that although Petitioner asserted that the State withheld a video of the crime, his conslusory allegations provided no legal or factual basis to conclude the he was subject to state action that impeded him from filing his petition in a timely manner. The district court furthered that there was no factual predicate for the claims that could not have been discovered previously if the Petitioner had acted with due diligence. Therefore, Petitioner did not present any statutory basis to save his late filed claims. Citing, Section 2244(d)(1)(D). (Appendix A).

The district court held that the Petitioner did not establish that he was entitled to Equitable Tolling in this case, because he gave no reasonable justification for failing to file his federal application within the 1-year deadline under the AEDPA, and regarding the contention that he is actually innocent based on Self-Defense, Petitioner did not submit any new evidence or show that such evidence was unavailable to him at the time of trial and that it would be material to his case.

The district court did not refer to, consider, and address Petitioner's Ineffective Assistance of Counsel (IAC) claim and predicate for the claim under Section 2244(d)(1)(D). (Appendix A).

Section 2244(d)(1)(D) provides that a 1-year limitation period 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- the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence. This time period begins to run for the purpose of Section 2244(d)(1)(D) when the prisoner knows, or through diligence could discover important facts, not when when the prisoner recognizes their legal significance. Owens v. Bryd, 235 F.3d 356 (7th Cir. 2000), and Paulson v. Quarterman, 260 Fed.Appx. 673 (5th Cir. 2007).

Whether a federal habeas petition is timely under Section 2244(d)(1)(D) such determination is fact-spcific. Rivas v. Fischer, 294 Fed.Appx. 677 (2nd Cir. 2008). It is not a matter for discussion by the district court whether the claimed newly discovered evidence is sufficient to merit habeas relief. The question is whether the habeas petitoner has met the requirements of Section 2244(d)(1)(D). Federick v. McNeil, 300 Fed.Appx. 731 (11th Cir. 2008).

In Perkins v. McQuiggin, 133 S.Ct. 1924 (2013), this Court established that in view of a credible claim of actual innocence, a federal habeas petitioner does not have to prove that he acted with reasonable diligence for equitable tolling to occur. Cf., Jaramillo v. Steward, 340 F.3d 877 (9th Cir. 2003); justification pursuant to Self-Defense regarding conduct non-criminal, which corresponds with the actual innocence requirement under Schulp v. Delo, 115 S.Ct. 8516 (1995).

This Court must assure itself that the Petitioner is not

significantly prejudiced by the delay focus on the limitation issue, and determine whether the interest of justice would be better served by addressing the merits, rather than dismissing the petition as time-barred. Gransberry v. Greer, 107 S.Ct. 1671 (1987). In the best aspect of the matter by requiring additional proceedings.

First, a "due diligence" inquiry should take into account that prisoners are limited by their physical confinement. Moore v. Knight, 368 F.3d 936 (7th Cir. 2004), and Montenegro v. U.S., 248 F.3d 585 (7th Cir. 2001). The Report & Recommendation states that nor is there a factual perdicate for the claims that could not have been discovered previously if the petitioner had acted with due diligence. The district court referred to Petitioner's Brady claim on Petitioner's newly discovered evidence and such being waived as a result of his guilty plea, and never considered and addressed the Petitioner IAC claim based on the newly discovered evidence.

Petitioner concisely argued that the Video-Tape Recording of Juan Carlos Medrano and Video-Tape written statement of Uriel Garcia had been suppressed and withheld by the State, and he learned of this evidence on September 15, 2020, as to commence the limitation period on this date. However, to the extent of the Petitioner's Brady claim, such had been waived because he pled guilty.

However, the district court did not extend this analysis to the Petitioner's IAC claim that trial counsel fail to adequately

conduct an investigation into the facts of the case and discover this evidence prior to trial, and had trial counsel discovered this evidence prior to trial that supported a claim of Self-Defense, he would not have entered a plea of guilt, but would have insisted on a trial.

How can trial counsel be ineffective in failing to discover certain evidence that was in possession of the State, that was hidden or not disclosed to defense, and the witnesses are not family members or friends. The district court did not state how the Petitioner could have discovered this evidence prior to trial or that it was in his reach prior to his plea of guilt.

Further, the district court did not take into consideration Petitioner's physical confinement in the purported diligence inquiry.

The focus is on the matter, that the district court never determine whether the Petitioner federal habeas petition was timely if the 1-year limitation period commenced September 15, 2020. In Douglas v. Workman, 560 F.3d 1156 (10th Cir. 2009), the court held that Section 2244(d)(1)(D) applies where the State withholds evidence underlying the claim. In this case, the evidence formulated the Petitioner's IAC claim and Brady claim, and was position on the voluntary nature of his plea, because had he been informed of this evidence, he would not have entered a plea of guilt, when the evidence supported a viable IAC claim.

The matter of holding that the Petitioner's federal habeas

is timely and the district court was incorrect by holding that the petition was not timely filed rest on the commencement and triggering date of September 15, 2020.

Petitioner filed his State habeas application on March 22, 2021, 6 months and 7 days after he acquired knowledge of and became aware of the evidence. Thus, the Petitioner had 5 months and 23 days remaining before the expiration of the 1-year limitation period. Petitioner's State habeas application was denied on October 12, 2022. The time that Petitioner's State habeas application was pending tolled the 1-year limitation period, thus, the limitation period commenced again on October 12, 2022, and the expired on April 23, 2023. Petitioner filed his federal habeas petition on December 09, 2022. Therefore, provided that the limitation period commenced on November 15, 2020, Petitioner's federal habeas petition was timely filed.

Similary in Moore v. Knight, 369 F.3d 936 (7th Cir. 2004), the court of appeals for the Seventh Circuit held that discovery of the factual predicate for any claim is established when the habeas petitioner obtains the testimonial affidavits because it is not until then that the petitioner has specific concrete informaion regarding what has transpired and/or occurred. Cf., Villanueva v. Anglin, 719 F.3d 769 (7th Cir. 2013); the court must consider both the date on which the habeas petitioner discovered the factual predicate of the claim and subjective knowledge of the facts.

In case of the Petitioner, the Petitioner did not know these

individuals or the fact that they had made written sworn statements as to what they knew about the incident, nor did trial counsel, being that such evidence had been suppressed and hidden by the State. Clearly, Petitioner could not have fairly known about the evidence and was unable to discover such information before tiral, and in light of trial counsel conducting a reasonable investigation into the matter, the evidence could not have been discovered before trial because it had been suppressed and hidden by the State. It is that this evidence by being suppressed and hidden by the State had a great impact on Petitioner's choice of pleading guilty to the alleged offense at the request of counsel, because had such evidence been disclosed and discovered by trial counsel prior to Petitioner's plea of guilty, based on this evidence that supported a viable claim of Self-Defense or a lesser-included offense, the Petitioner would not have entered a plea of guilt and would have insisted on a trial.

Clearly, Petitioner has demonstrated reasonable jurists could debate whether the district court was correct in its procedural ruling when compared to the decisions delivered in Moore, Villanueva, and Douglas, that the limitation period should have commenced on September 15, 2020.

Therefore, resolving any doubts in favor as to whether a COA should be granted in favor of Petitioner, a COA must be granted on this issue.

(3)

The district court held that even if the Petitioner's guilty

plea did not foreclose consideration of the actual innocence exception under Perkins v. McQuiggin, 133 S.Ct. 1924 (2013). Citing, Schulp v. Delo, 115 S.Ct. 851 (1995), Petitioner did not establish that his purported "new evidence" of a video and other statements taken before trial was unavailable at trial, because it was within his or his counsel's reach with reasonable investigation. The district court furthered that the Petitioner did not submit any new evidence or show that such evidence was unavailable to him at the time of trial and that it would be material to his case. (Appendix B).

First, the preformatted federal habeas corpus form did not ask for any evidence or required the Petitioner to attach any evidence to the petition. Just to merely state the supporting facts for each claim.

Second, the district court did not have before it the State court record, and the record from Petitioner's State habeas application that contained the evidence the Petitioner was purportedly required to submit. The State was not required to respond or answer to the Petitioner's federal habeas petition, and the petition provided uncontested and uncontrovered facts in support of Petitioner's claim of actual innocence.

As explained and set out above, neither Petitioner or his counsel was aware of the evidence prior to trial because it had been suppressed and hidden by the State, which a reasonable investigation would not have survived given this circumstance.

Petitioner spelled out exactly how this evidence proved

his innocence and supported a viable claim of Self-Defense or a lesser-included offense. The district court did not explain in its determination how the evidence was not supportative of his Self-Defense claim that meets the requirement of actual innocence. Jaramillo, Supra.

Therefore, reasonable jurists could debate whether the assessment of the Petitioner's actually innocence claim was correct without affording a thorough review of the facts associated with the claim, as a gateway to have heard the defaulted claims under the 1-year limitation period, that greatly calls into question voluntariness of the Petitioner's plea of guilt absent this evidence. Thus, this Court should issue and/or grant a COA.

(4)

Whether the petition states a valid claim of the denial of a constitutional right.

The petition in this case clearly provides a facial valid claim of the denial of a constitutional right by pleading that (1) he was deprived of his constitutional right to effective assistance of counsel, and (2) he was deprived of his rights to Due Process because the State suppressed and hid evidence that was probative and material to his defense, and which directly impacted his decision to plead guilty at the advise of counsel.

Therefore, reasonable jurists would find it debatable that the petition states a valid claim of the denial of a constitutional right.

VI.
PRAYER

WHEREFORE, PREMISES CONSIDERED, and in the interest of justice, Petitioner respectfully moves and prays, that for the reasons set forth above and as demonstrated that a COA in all be granted.

/s/ Humberto Andres Maldonado
Humberto Andres Maldonado
No. #01550880
John M. Wynne State Farm
810 FM 2821, West Hwy. 75, N.
Huntsville, Texas. 77349-0005

Petitioner, In propria persona.

PROOF OF SERVICE

I, Humberto Andres Maldonado, do swear or declare that on this date, June 06, 2025, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and APPLICATION FOR A CERTIFICATE OF APPEALABILITY on each party to the above proceedings or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 clandar days.

The names and addresses of those served are as follows: Ken Paxton, Attorney General, State of Texas, P.O. Box 12548, Austin, Texas, 78711-2548.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 06, 2025.

/s/Humberto Andres Maldonado
Hunberto Andres Maldonado

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUMBERTO ANDRES MALDONADO, TDCJ #01550880,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. H-22-4401
BOBBY LUMPKIN,	§	
Respondent.	§	

MEMORANDUM AND ORDER

Petitioner Humberto Andres Maldonado (TDCJ #01550880) filed this petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his 2009 conviction and sentence for murder. Because it appeared from the petition and public court records that the petitioner did not file his federal habeas petition within 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), the Court ordered Maldonado to show cause for why this petition should not be dismissed as barred by the applicable statute of limitations. Doc. No. 4. Maldonado did not respond to the Court's Order to Show Cause regarding the limitations issue. After reviewing the pleadings in accordance with Rule 4 of the Rules Governing Section 2254 Cases in the United

Attachment A

States District Courts, the Court concludes that the petition must be dismissed for reasons set forth below.

I. Background

Maldonado is currently incarcerated by the Texas Department of Criminal Justice - Correctional Institutions Division ("TDCJ") as a result of his 2009 murder conviction in the 180th Judicial District Court of Harris County, Texas, in cause number 1098001. Doc. No. 1 at 1-2. On January 15, 2009, Maldonado was convicted after pleading guilty and received a 45-year prison sentence. Id. at 2-3. He did not appeal his conviction. Id. at 3.

On February 13, 2012, Maldonado filed his first state application for habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure that was dismissed on April 9, 2012. *See* Ex parte Maldonado, WR-77,351-01 (Tex. Crim. App. Apr. 9, 2012). On March 22, 2021, Maldonado filed a second state application for a writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure that was denied without written order on October 13, 2022. *See* Ex parte Maldonado, WR-77,351-02 (Tex. Crim. App. Oct. 13, 2022); Doc. No. 1 at 3-4.

On December 9, 2022, Maldonado placed the pending federal petition in the prison mailbox system. Doc. No. 1 at 18. Maldonado contends that he is entitled to relief, claiming that his

constitutional rights were violated because: (1) he was not adequately informed that he had no right to appeal; (2) he never elected whether to be sentenced by a judge or jury; (3) there was insufficient evidence to show that he was the same person as was named in the indictment, and therefore he is "actually innocent"; (4) he was not provided a licensed interpreter in his proceedings; (5) the State did not provide a videotape of the victim that supported the petitioner's claim of self-defense; (6) he is actually innocent of having caused the death of the victim, and the State had no evidence to support the conviction; and (7) his trial counsel rendered ineffective assistance of counsel. Doc. No. 1 at 8-15.

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). Although the statute of limitations is an affirmative defense, district courts may raise the defense *sua sponte* and dismiss a petition prior to any answer if it "plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court." Kiser v. Johnson, 163 F.3d 326, 328 (5th Cir. 1999) (quoting 28 U.S.C. foll. § 2254 Rule 4). A

district court may dismiss a petition as untimely on its own initiative where it gives fair notice to the petitioner and an opportunity to respond. *See* Day v. McDonough, 126 S. Ct. 1675, 1684 (2006).

Because Maldonado challenges a state court judgment of conviction, the statute of limitations for federal habeas corpus review began to run on "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, at the latest, on February 14, 2009, when the time to file a direct appeal expired.[1] The pending federal habeas corpus petition, filed on December 9, 2022, was filed more than thirteen years after his conviction became final and is therefore time-barred unless an exception applies.

The form petition that Maldonado signed gave him fair notice of the one-year statute of limitations found in the AEDPA, setting

[1] The trial court certified that Maldonado had no right to appeal. Under these circumstances, some courts have found that a defendant's conviction becomes final on the day he is sentenced because he waived the right to appeal as part of his plea bargain. *See, e.g.*, Chacon v. Stephens, Civ. A. No. 4:13-cv-2184, 2014 WL 3543722, at *3 & n.5 (S.D. Tex. Jul. 14, 2014) (citing cases); *but see* DeLeon v. Davis, Civ. A. No. 7:18-cv-00331, 2019 WL 7403981, at *2 n.4 (S.D. Tex. Oct. 9, 2019) (noting that when a conviction becomes final where the defendant has waived his right to appeal "is an unsettled area of the law, and the undersigned will err on the side of caution by giving Petitioner the benefit of the 30 days") (citing cases). In any event, the petition is untimely whether the conviction became final on January 15, 2009 (upon sentencing) or February 14, 2009 (upon the expiration of the time to file an appeal).

out 28 U.S.C. § 2244(d) in full, and asked him to explain why his petition was not time-barred. Doc. No. 1 at 17. Maldonado cited his earlier habeas application, filed in 2012, as possibly tolling the statute of limitations and claims that the State withheld evidence that shows that he acted in self-defense and is actually innocent. Id.

A. Statutory Tolling

Although a properly filed state application for habeas corpus tolls the limitation period, Maldonado's state applications were not filed within the limitations period, and, therefore, do 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 the statute of limitations is not tolled by a state habeas corpus application filed after the expiration of the limitations period). Therefore, Maldonado does not show statutory tolling based on a properly filed state application for collateral review.

Additionally, although Maldonado asserts that the State withheld a video of the crime, his conclusory allegations provide no legal or factual basis to conclude that Maldonado was subject to state action that impeded him from filing his petition in a timely manner. *See* 28 U.S.C. § 2244(d)(1)(B); *see also* Brown v.

Lumpkin, Civ. A. No. H-22-0892, 2022 WL 1644454, at *2 (S.D. Tex. May 23, 2022) (holding that the petitioner's conclusory allegations were insufficient to support any legal or factual basis for tolling). Maldonado fails to plead facts to show that any state action prevented him from filing his state applications for over a decade. 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, Maldonado does not present any statutory basis to save his late-filed claims.

B. Equitable Tolling

The statute of limitations 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). 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)).

Maldonado does not establish that he is entitled to equitable tolling in this case. He gives no reasonable justification for failing to file his federal application within the one-year deadline under AEDPA. Regarding his contention that he is actually innocent based on self-defense, he does not submit any new evidence or show that such evidence was unavailable to him at the time of trial and that it would be material to his case. He does not present "'evidence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error.'" McQuiggin v. Perkins, 569 U.S. 383, 401 (2013) (quoting Schlup v. Delo, 513 U.S. 298, 316 (1995)). Maldonado does not meet his burden to establish actual innocence with new reliable evidence as is required under the standard in McQuiggin and Schlup to excuse his tardiness in filing his federal petition. Accordingly, his petition is barred by the one-year statute of limitations under the AEDPA 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**.

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

SIGNED at Houston, Texas, on this 31 ST day of Oct., 2023.

Ewing Werlein, Jr.

EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUMBERTO ANDRES MALDONADO, TDCJ #01550880,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. H-22-4401
BOBBY LUMPKIN,	§	
Respondent.	§	

FINAL JUDGMENT

For the reasons set forth in the Court's Memorandum and Order signed on this day, this case is **DISMISSED** with prejudice as barred by the statute of limitations.

A certificate of appealability is **DENIED**.

This is a **FINAL JUDGMENT**.

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

SIGNED at Houston, Texas, on this 31ST day of October, 2023.

Ewing Werlein, Jr.

EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUMBERTO ANDRES MALDONADO, TDCJ #01550880,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. H-22-4401
BOBBY LUMPKIN,	§	
Respondent.	§	

ORDER

On October 31, 2023, the Court dismissed this petition with prejudice as barred by the applicable 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). Doc. No. 6. Pending is Petitioner Humberto Andres Maldonado's motion for reconsideration of that Order under Federal Rule of Civil Procedure 59(e). Doc. No. 8.

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

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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.

Maldonado complains that (1) his petition was dismissed in violation of his due process rights because he did not have notice and an opportunity to be heard regarding the timeliness issue; (2) the Court abused its discretion when it determined that he did not meet the requirements for statutory tolling and failed to address his Brady claim and actual innocence claim; and (3) the Court abused its discretion when it failed to address his "newly discovered evidence" that was purportedly discovered in September 2020 and forms a new factual predicate for his claim(s).

First, in January 2023, a full nine months before dismissing this case, the Court ordered Maldonado to show cause for why this case is not barred by the statute of limitations. *See* Doc. No. 4. Maldonado now claims never to have received that order, even though such was never returned to sender as undeliverable. In addition, the form petition Maldonado submitted as his petition set forth

the AEDPA statute of limitations in 28 U.S.C. § 2244(d) in full and required Maldonado to state why the one-year statute of limitation does not bar his petition. Indeed, Maldonado provided his reasons for why he believed his petition was not barred. See Doc. No. 1 at 17. Maldonado's first issue is frivolous.

Second, the Court's conclusion that statutory tolling did not apply was correct. To recap, Maldonado's conviction was final, at the latest, on February 14, 2009, making his federal petition due by February 14, 2010, absent tolling. He filed his first application on February 13, 2012, nearly two years after the limitations period. Even if that application had been decided on the merits (and not withdrawn), it does not toll the limitations period because it was filed after the limitations period expired. *See* 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). Likewise, his second state application, filed on March 22, 2021, does not toll the limitations period. Id.

Finally, Maldonado contends that he has "newly discovered evidence" of a witness statement and a videotape that support a Brady claim. He now claims that he only discovered this evidence in September 2020, forming a new factual predicate and showing that his petition is timely.

To the extent that he seeks to reopen this case to assert a Brady claim, he waived that claim when he entered a guilty plea. *See* United States v. Meza, 843 F.3d 592, 599 n.3 (5th Cir. 2021); *see also* Orman v. Caine, 228 F.3d 616, 617 (5th Cir. 2000) ("Brady requires a prosecutor to disclose exculpatory evidence for purposes of ensuring a fair trial, a concern that is absent when a defendant waives trial and pleads guilty."). His proposed Brady claim must be dismissed.

Further, "[b]ecause the required showing is one of factual innocence, a number of courts in the Fifth Circuit have held that Petitioner's guilty plea forecloses any claim of actual innocence." Shepherd v. Dir., TDCJ-CID, No. 6:23-CV-5, 2023 WL 7443042, at *4 (E.D. Tex. Sept. 12, 2023) (citing cases), *rec. adopted*, 2023 WL 7414257 (E.D. Tex. Nov. 9, 2023); *see also* Craddock v. Lumpkin, No. 4:22-CV-519-P, 2023 WL 2429497, at *6 (N.D. Tex. Mar. 9, 2023) (noting that "the Fifth Circuit has not yet addressed whether such a guilty plea precludes a petitioner from arguing actual innocence to extend a time period under McQuiggin" but holding that the petitioner's judicial confessions likely foreclose the McQuiggin gateway) (citing and discussing cases within the Fifth Circuit).

Maldonado does not dispute that he entered a guilty plea that included a judicial confession of guilt on the record. He does

not show that he is factually innocent as is required to assert actual innocence under McQuiggin.

Even if his guilty plea does not foreclose consideration of the McQuiggin exception, Maldonado does not establish that his purported "new evidence" of a video and other statements taken before trial was unavailable at trial, because it was within his or his counsel's reach with reasonable investigation. *See* Hancock v. Davis, 906 F.3d 387, 390 (5th Cir. 2018) (holding that petitioner did not establish that the affidavits of four witnesses who testified at trial were unavailable to him at trial and therefore were not "new evidence"); *see also* Shepherd, 2023 WL 7443042, at *4 (holding that a witness statement was not "new evidence" because the petitioner could have obtained it prior to trial with reasonable investigation). Maldonado does not submit any new evidence or show that such evidence was unavailable to him at the time of trial and that it would be material to his case. He does not present "'evidence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error.'" McQuiggin, 133 S. Ct. at 1936 (quoting Schlup v. Delo, 115 S. Ct. 851, 861 (1995)). Maldonado does not meet his burden to establish actual innocence with new reliable evidence as is

required for the "actual innocence" exception to the statute of limitations.

In sum, nothing in his motion for reconsideration alters the Court's conclusion that his claim is time-barred and subject to dismissal under AEDPA.

Therefore, it is hereby

ORDERED that the pending motion for reconsideration (Doc. No. 8) is **DENIED**; it is further

ORDERED that a certificate of appealability is **DENIED**.

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

SIGNED at Houston, Texas, on this 4th day of April, 2024.

Ewing Werlein, Jr.

EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE

United States Court of Appeals for the Fifth Circuit

No. 24-20193

HUMBERTO ANDRES MALDONADO,

Petitioner—Appellant,

versus

ERIC GUERRERO, *Director, Texas Department of Criminal Justice, Correctional Institutions Division*,

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-4401

ORDER:

Humberto Andres Maldonado, Texas prisoner # 01550880, moves this court for a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2254 application as untimely and its denial of his postjudgment motion under Federal Rule of Civil Procedure 59(e). Maldonado filed the application to challenge his 45-year sentence for murder. He contends that the district court violated his due process rights by sua sponte dismissing his § 2254 application as untimely without providing adequate notice and an opportunity to respond. He further contends that he

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is entitled to tolling of the limitations period due to newly discovered evidence, which he asserts establishes that he is actually innocent and that his guilty plea was involuntary due to ineffective assistance of counsel.

To obtain a COA, Maldonado 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, 484 (2000). When a district court's denial of relief is based on procedural grounds, a COA may not issue unless the prisoner shows 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." *Id.*

Maldonado has not made the requisite showing. *See id.* Accordingly, his request for a COA is DENIED.

STEPHEN A. HIGGINSON
United States Circuit Judge

CLOSED,HABE...

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:22-cv-04401
Internal Use Only

Maldonado v. Lumpkin
Assigned to: Judge Ewing Werlein, Jr
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 12/16/2022
Date Terminated: 10/31/2023
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: Federal Question

Petitioner

Humberto Andres Maldonado

represented by **Humberto Andres Maldonado**
01550880
Wynne Unit
810 F.M. 2821
Huntsville, TX 77349
PRO SE

V.

Respondent

Bobby Lumpkin
TDCJ-CID

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/16/2022	1	PETITION for Writ of Habeas Corpus filed by Humberto Andres Maldonado. (AkeitaMichael, 4) (Entered: 12/20/2022)
12/20/2022	2	NOTICE to Pro Se Litigant of Case Opening. Party notified, filed. (AkeitaMichael, 4) (Entered: 12/20/2022)
12/20/2022	3	CLERKS NOTICE OF DEFICIENT PLEADING as to Humberto Andres Maldonado. Parties notified Notice of Compliance due by 1/19/2023, filed. (Attachments: # 1 Appendix) (bgoolsby, 4) (Entered: 12/20/2022)
01/04/2023		HABEAS Filing fee: $5.00 re: 1 Petition for Writ of Habeas Corpus, 3 Notice of Deficient Pleading (FORM), receipt number HOU113159, filed. (dbarrett, 4) (Entered: 01/04/2023)

Appendix D.

01/23/2023	4	ORDER TO SHOW CAUSE. Show Cause Response due by 2/23/2023. (Signed by Judge Ewing Werlein, Jr) Parties notified. (marflores, 4) (Entered: 01/23/2023)
10/24/2023	5	Letter from H. Maldonado re: Status of Case, filed. (DarleneHansen, 4) (Entered: 10/24/2023)
10/31/2023	6	MEMORANDUM AND ORDER. 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. (Signed by Judge Ewing Werlein, Jr) Parties notified. (MarilynFlores, 4) (Entered: 10/31/2023)
10/31/2023	7	FINAL JUDGMENT. A certificate of appealability is DENIED. Case terminated on 10/31/2023.(Signed by Judge Ewing Werlein, Jr) Parties notified. (MarilynFlores, 4) (Entered: 10/31/2023)
11/22/2023	8	MOTION for Reconsideration of 6 Memorandum and Order, 7 Final Judgment by Humberto Andres Maldonado, filed. Motion Docket Date 12/13/2023. (NeldaGarcia, 2) (Entered: 11/22/2023)
03/25/2024	9	Letter from Humberto Andres Maldonado re: status update in case and notice of submission of Motion for Reconsideration, filed. Copy of Docket Sheet mailed to Plaintiff via USPS First Class Mail on the 26th Day of March 2024. (abb4) (Entered: 03/26/2024)