

Decision Of
United States District Court

Appendix D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

WACO DIVISION

STEVE MONTRELL WILLIAMS,
TDCJ No. 01757890,
Petitioner,

v.

WILLIAM STEPHENS,
Director, Texas Department of
Criminal Justice, Correctional
Institutions Division,
Respondent.

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CIVIL ACTION NO. W-15-CV-108

ORDER

Petitioner Steve Montrell Williams ("Petitioner"), proceeding pro se and in forma pauperis, filed the instant action pursuant to 28 U.S.C. § 2254. After reviewing the United States Magistrate Judge's Report and Recommendation and Petitioner's Objections thereto de novo, the Court finds that the Report and Recommendation should be **ADOPTED** and the petition **DISMISSED**.

I. **Factual and Procedural History**

Petitioner is in the custody of the Texas Department of Criminal Justice, Correctional Institutions Division as a result of a judgment from the 19th Judicial District Court of McLennan County, Texas. Doc. 1 at 2. A jury found Petitioner guilty of aggravated robbery on September 14, 2011, and he was sentenced to twenty years' imprisonment. *Id.* The Seventh District Court of Appeals confirmed

Petitioner's conviction on appeal. *Id.* at 3. The Texas Court of Criminal Appeals subsequently denied Petitioner's petition for discretionary review and his state habeas corpus action without written order. *Id.* In the case at hand, Petitioner raises two claims: (1) actual innocence; and (2) violation of due process because the state courts denied his state habeas corpus action without sufficient written rulings. *Id.* at 6.

II. Standard of Review

A. *De Novo Review of Petitioner's Objections*

Parties may file objections to a Magistrate Judge's Report and Recommendation. However, a party filing objections must specifically identify those findings or recommendations to which the objections are being made. The Court need not consider frivolous, conclusive, or general objections. See *Battle v. U.S. Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). A party's failure to file written objections to the proposed findings and recommendations contained in the Report and Recommendation within fourteen days after the party is served with a copy of it shall bar that party from a de novo review; and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions the Court accepts. See 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985).

Here, on April 7, 2016, the Magistrate Judge issued a Report and Recommendation, which recommended that Petitioner's petition be denied. Doc.

7 at 9. The Court granted Petitioner an extension of time to file his objections, and on May 23, 2016, the Court received Petitioner's objections to the Report and Recommendation prior to the Court-imposed deadline. Doc. 10. Consequently, the Court reviews de novo the Report and Recommendation's findings and recommendations to which Petitioner specifically objected. See 28 U.S.C. § 636(b)(1).

B. The Antiterrorism and Effective Death Penalty Act ("AEDPA")

The AEDPA governs this case. See 28 U.S.C. § 2254; see also *Lindh v. Murphy*, 521 U.S. 320, 336 (1997) (holding that the AEDPA applies to noncapital habeas corpus cases filed after its effective date of April 24, 1996). The AEDPA "substantially restricts the scope of federal review of state criminal court proceedings." *Montoya v. Johnson*, 226 F.3d 399, 404 (5th Cir. 2000). In short, the AEDPA seeks to prevent "federal habeas 'retrials' . . . to ensure that state-court convictions are given effect to the extent possible under the law." *Bell v. Cone*, 535 U.S. 685, 693 (2002). Accordingly, a habeas petitioner under the AEDPA has the burden to prove his entitlement to relief. *Montoya*, 226 F.3d at 405.

The applicability of § 2254(d)(1)–(2) is limited to claims that were adjudicated "on the merits in state-court proceedings." 28 U.S.C. § 2254(d). The term of art "on the merits" refers to whether a state-court's disposition of a habeas petition was substantive as opposed to procedural. *Green v. Johnson*,

116 F.3d 1115, 1121 (5th Cir. 1997). As the Texas Court of Criminal Appeals has explained, under Texas law, denial of a state habeas petition, rather than dismissal, indicates that the state-court's resolution of the petitioner's claims was a substantive adjudication "on the merits." *Salazar v. Dretke*, 419 F.3d 384, 398–99 (5th Cir. 2005); *Miller v. Johnson*, 200 F.3d 274, 281 (5th Cir. 2000).

A decision is contrary to clearly established federal law "if the state-court arrives at a conclusion opposite to that reached by [the Supreme Court] on a question of law or if the state court decides a case differently than [the] Court has on a set of materially indistinguishable facts." *Williams v. Taylor*, 529 U.S. 362, 413 (2000). Alternatively, a habeas petitioner may demonstrate that a state-court decision was an unreasonable application of federal law under § 2254(d)(1) if "the state-court identifies the correct governing legal principle . . . but unreasonably applies that principle to the facts of the prisoner's case." *Id.* However, to be unreasonable, a state-court's decision must be more than merely incorrect. See *Gardner v. Johnson*, 247 F.3d 551, 559–60 (5th Cir. 2001). A reversal is not required unless the "state-court decision applies the correct legal rule to a given set of facts in a manner that is so patently incorrect as to be 'unreasonable.'" *Id.*; see *Montoya v. Johnson*, 226 F.3d 399, 404 (5th Cir. 2000) (noting that the standard for federal habeas relief is one of objective reasonableness).

Additionally, in reviewing a state prisoner's federal habeas petition, a

"determination of a factual issue made by a state court shall be presumed to be correct," and a petitioner "shall have the burden of rebutting the presumption by clear and convincing evidence." 28 U.S.C. § 2254(e)(1). Consequently, a petitioner "must be diligent in developing the record and presenting all claims of constitutional error." *Williams*, 529 U.S. at 437. And "[i]f the prisoner fails to do so, § 2254(e) prohibits an evidentiary hearing to develop the relevant claims in federal court, unless the statute's other stringent requirements are met." *Id.*

III. Analysis

A. Actual Innocence

Petitioner offers an affidavit ostensibly from his co-defendant Arrack Mathews ("Mathews"), who states that he committed the robbery and that police detectives coerced him to implicate the innocent Petitioner. Doc. 1 at 6, 14, 22–23. Petitioner objects to the Magistrate Judge's finding that the latest Petitioner would have discovered that Mathews lied in his statement about Petitioner's involvement in the crime would have occurred at trial (i.e., when Petitioner had the opportunity to confront Mathews during cross-examination). According to Petitioner's objection, he did not become cognizant of Mathews's false implication of him until far after trial—apparently not until he secured the affidavit from Mathews. Doc. 10 at 5.

However, Petitioner's objection contradicts his claim. On one hand, Petitioner indicates that he did not know Mathews lied about his involvement in

the crime until he “discovered” the March 5, 2014 affidavit. But on the other hand, Petitioner’s objection admits that he was aware of Mathews’s false statement at trial and the affidavit merely shed light as to the reason Mathews proffered the false statement. *See id.*

The Magistrate Judge reasoned that Petitioner “would necessarily have known at trial that [Mathews’s] statement was false and could have cross-examined Mathews accordingly.” The Court agrees. Petitioner’s trial was the latest he would have discovered that Mathews was falsely implicating him and his contention that he did not discover the false statement until March 4, 2014—the date of the affidavit—defies logic.

Regardless, the Court agrees that Mathews’s affidavit is not reliable. “Recanting affidavits and witnesses are viewed with *extreme suspicion* by the courts.” *May v. Collins*, 955 F.2d 299, 314 (5th Cir. 1992) (quoting *United States v. Adi*, 759 F.2d 404, 408 (5th Cir. 1985) (emphasis added, brackets omitted)). Indeed, “[c]ourts treat recantations and claims of perjury with great skepticism even under the best of circumstances.” *May*, 955 F.2d at 314 (quoting *U.S. ex rel. Jones v. DeRobertis*, 766 F.2d 270, 272 (7th Cir. 1985)).

Here, the Texas Court of Criminal Appeals denied Petitioner relief in his state habeas corpus application¹ without written order, which is an adjudication on the merits and thus is entitled to a presumption of correctness. *See Singleton*

¹ *Ex Parte Williams*, WR-81,328-01, Texas Judicial Branch online case search, <http://www.search.txcourts.gov/Case.aspx?cn=WR-81,328-01&coa=coscca>.

v. Johnson, 178 F.3d 381, 384 (5th Cir. 1999). The Report and Recommendation accurately explains that the Texas Court of Criminal Appeals' denial of relief was an implicit conclusion that Mathews's affidavit "lacked trustworthiness and credibility." Doc. 7 at 8. The Court overrules Petitioner's objection pertaining to his actual innocence claim because he failed to overcome the presumption of correctness by clear and convincing evidence. See *May*, 955 F.2d at 313–14.

B. Due Process

Although intertwined with Petitioner's actual innocence claim, he objects to the Magistrate Judge's conclusion that his state habeas corpus application was adjudicated on the merits because the Texas Court of Criminal Appeals denied relief without written order. Doc. 10 at 8–10. Petitioner asserts that he did not receive due process because the Texas Court of Criminal Appeals did not address his constitutional claims. *Id.* at 8.

Here, Petitioner is incorrect. First, as discussed *supra*, the Texas Court of Criminal Appeals' silent denial of his state habeas corpus application is an adjudication on the merits. See *Singleton*, 178 F.3d at 384. "In Texas writ jurisprudence, . . . a denial of relief rather than a 'dismissal' of the claim by the Court of Criminal Appeals disposes of the merits of the claim." *Id.*

Furthermore, Petitioner's claims of infirmities in the state habeas proceedings are not cognizable on federal habeas review. *Rudd v. Johnson*, 256 F.3d 317, 319–20 (5th Cir. 2001) ("[I]nfirmities in state habeas proceedings do no

constitute grounds for relief in federal court.") (internal quotation marks omitted). "That is because an attack on the state habeas proceeding is an attack on a proceeding collateral to the detention and not the detention itself." *Id.* at 320 (citing *Nichols v. Scott*, 69 F.3d 1255, 1275 (5th Cir. 1995)). Therefore, to the extent that Petitioner challenges the propriety of the state's habeas corpus proceedings, said challenge is without merit. Petitioner's due process rights were not violated, and any objections to the contrary are overruled.

IV. Conclusion

The Court has determined that the Magistrate Judge's findings and recommendation should be **ADOPTED**. Accordingly, it is

ORDERED that Petitioner's objections are **OVERRULED**. It is further

ORDERED that the instant petition is **DENIED** and the case **DISMISSED**.

It is further

ORDERED that any relief not specifically granted in this Order is **DENIED**.

SIGNED this 20th day of June, 2016.



WALTER S. SMITH, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

WESTERN

DISTRICT OF

TEXAS

STEVE MONTRELL WILLIAMS

JUDGMENT IN A CIVIL CASE

Plaintiff,

V.

WILLIAM STEPHENS

Case Number: W-15-CV-00108

Defendants.

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

ORDERED that the Magistrate Judge's findings and recommendation are ADOPTED.

ORDERED that Petitioner's objections are OVERRULED.

ORDERED that the instant petition is DENIED and the case is DISMISSED.

ORDERED that any relief not specifically granted in this Order is DENIED.

6/20/2016

Date

Jeannette J. Clack

Clerk

Melissa Cogg

(By) Deputy Clerk

APR 07 2016

FOR THE WESTERN DISTRICT OF TEXAS

WACO DIVISION

~~~~~

**vs.**

**WILLIAM STEPHENS,**  
Director, Texas Department of  
Criminal Justice, Correctional  
Institutions Division,  
*Respondent.*

1

aggravated robbery. A jury found Petitioner guilty on September 14, 2011 and sentenced him to twenty years of imprisonment. Petitioner appealed, and the Seventh District Court of Appeals affirmed the conviction. *Id.* at 3. The Texas Court of Criminal Appeals denied Petitioner's subsequent petition for discretionary review. Petitioner then filed a state habeas corpus action that the Court of Criminal Appeals denied without written order. *Id.*

In the instant case, Petitioner raises two claims:

- 1) Petitioner is actually innocent; and
- 2) The state courts denied Petitioner due process by denying his state habeas corpus action without sufficient written rulings.

Pet. at 6. Pursuant to Rule 4 of the Rules Governing Habeas Corpus Cases Under § 2254, the Court makes this Recommendation sua sponte, and the Court has not ordered Respondent to file an answer.

## II. DISCUSSION

### Standard of Review

The Antiterrorism and Effective Death Penalty Act ("AEDPA"), which governs this case, "substantially restricts the scope of federal review of state criminal court proceedings." *Montoya v. Johnson*, 226 F.3d 399, 404 (5th Cir. 2000). In short, the AEDPA seeks to prevent "federal habeas 'retrials' . . . to ensure that state-court convictions are given effect to the extent possible under the law." *Bell v. Cone*, 535 U.S. 685, 693 (2002). Accordingly, a habeas petitioner under the AEDPA has the burden to prove his entitlement to its relief. *Montoya*, 226 F.3d at 404. To meet that burden, the AEDPA dictates:

An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated *on the merits* in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d) (emphasis added).

By its plain terms, the applicability of section 2254(d) is limited to those claims which were adjudicated “on the merits in state court proceedings.” 28 U.S.C. § 2254(d). The term of art “on the merits” refers to whether a state court’s disposition of a habeas petition was substantive as opposed to procedural. *Green v. Johnson*, 116 F.3d 1115, 1121 (5th Cir. 1997). As the Texas Court of Criminal Appeals has held, denial of a state habeas petition, rather than dismissal, indicates that the state court’s resolution of the petitioner’s claims was a substantive adjudication “on the merits.” *Salazar v. Dretke*, 419 F.3d 384, 398-99 (5th Cir. 2005); *Miller v. Johnson*, 200 F.3d 274, 281 (5th Cir. 2000); *Ex parte Torres*, 943 S.W.2d 469, 472 (Tex. Crim. App. 1997) (en banc) (“In our writ jurisprudence, a ‘denial’ signifies that we addressed and rejected the merits of a particular claim while a ‘dismissal’ means that we declined to consider the claim for reasons unrelated to the claim’s merits.”).

A decision is contrary to clearly established federal law, thus satisfying section 2254(d)(1), “if the state court arrives at a conclusion opposite to that reached by [the Supreme Court] on a question of law or if the state court decides a case differently than [the] Court has on a set of materially indistinguishable facts.”

*Williams v. Taylor*, 529 U.S. 362, 413 (2000). Alternatively, a habeas petitioner may demonstrate that a state court decision was an unreasonable application of federal law under section 2254(d)(1) “if the state court identifies the correct governing legal principle . . . but unreasonably applies that principle to the facts of the prisoner’s case.” *Id.* However, to be unreasonable, a state court’s decision must be more than merely incorrect. *See Gardner v. Johnson*, 247 F.3d 551, 559-560 (5th Cir. 2001). A reversal is not required unless the “state court decision applies the correct legal rule to a given set of facts in a manner that is so patently incorrect as to be ‘unreasonable.’” *Id.*; *see Montoya*, 226 F.3d at 404 (noting that the standard for federal habeas relief is one of objective reasonableness.); *Neal v. Puckett*, 286 F.3d 230, 244-47 (5th Cir. 2002) (holding that under AEDPA, a state court’s conclusion of lack of prejudice, although incorrect, was not an unreasonable application of clearly established federal law).

Additionally, in reviewing a state prisoner’s federal habeas petition, “a determination of a factual issue made by a State court shall be presumed to be correct,” and the petitioner “shall have the burden of rebutting the presumption by clear and convincing evidence.” 28 U.S.C. § 2254(e)(1). Moreover, where the petitioner:

has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2254(e)(2).

Actual innocence

In his first claim, Petitioner asserts that he is actually innocent—he did not commit the aggravated robbery for which he was convicted. Fed. Writ Pet. at 6. In support of this claim, Petitioner offers an affidavit ostensibly from his co-defendant Arrack Mathews, who claims that he committed the robbery and that police detectives coerced him to implicate the innocent Petitioner. Pet. at 6, 14, 22-23.

A claim of actual innocence may take two forms in a petition for a writ of habeas corpus, a *Herrera*-type claim or a *Schlup*-type claim. In *Herrera v. Collins*, 506 U.S. 390 (1993), the petitioner claimed that he was innocent, therefore his sentence violated his 8th Amendment right to be free from cruel and unusual punishment. Herrera claimed that even if the proceedings that resulted in his conviction and sentence were entirely fair and error free, his innocence would inherently render his execution a “constitutionally intolerable event.” *Schlup*, 513

U.S. at 314, quoting *Herrera*, 506 U.S. at 419. The Fifth Circuit has held that this sort of freestanding claim of actual innocence is not cognizable on federal habeas review. *Herrera v. Collins*, 954 F.2d 1029, 1034 (5th Cir. 1992); *Graves v. Cockrell*, 351 F.3d 143, 151 (5th Cir. 2003); see also *Dowhitt v. Johnson*, 230 F.3d 733 (5th Cir. 2000); *Foster v. Quarterman*, 466 F.3d 359, 367-68 (5th Cir. 2006); *In re Swearingen*, 556 F.3d 344, 348 (5th Cir. 2009). Federal habeas courts sit to ensure that individuals are not imprisoned in violation of the Constitution, not to correct errors of fact. *Herrera*, 506 U.S. at 400. Thus, insofar as Petitioner raises a freestanding actual innocence claim, his claim should be denied.

In *Schlup v. Delo*, 513 U.S. 298, 314 (1995), the petitioner's claim of actual innocence served as a gateway to allow federal review on the merits of constitutional claims otherwise procedurally barred. See also *House v. Bell*, 547 U.S. 518, 536-37 (2006). A *Schlup*-type claim requires the prisoner to present new, reliable evidence that establishes "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." *Schlup*, 513 U.S. at 324, 327. A *Schlup*-type scenario typically arises from the discovery of credible evidence that was not presented at trial and is discovered after the exhaustion of available state remedies or the expiration of time limits to do so. *Woodfox v. Cain*, 609 F.3d 774, 793-794 (5th Cir. 2010); *Schlup*, 513 U.S. at 324.

If the prisoner successfully makes this threshold showing, then the federal court may consider whether the prisoner's procedurally-barred constitutional claims merit the granting of habeas relief. *Id.* A *Schlup*-type claim of actual innocence does

not independently merit habeas relief, it merely serves as a means to secure habeas review for other constitutional errors. *Id.*

Here, Petitioner's actual innocence claim does not raise "new reliable evidence" that was not presented at trial. *Schlup*, 513 U.S. 324. Petitioner offers a March 5, 2014 affidavit (sworn, but unnotarized) of Arrack Mathews. Pet. at 22. In the affidavit, Mathews claims that police detectives pressured him into signing a statement that falsely implicated Petitioner. Petitioner argues, in effect, that he did not discover until March 5, 2014, that his co-defendant lied in his statement about Petitioner's involvement with the crime. Plaintiff would necessarily have known at trial that the statement was false and could have cross-examined Mathews accordingly. Plaintiff's "discovery" did not occur when he received the affidavit on March 5, 2014; the factual predicate for his claim arose—at the latest—at trial.

Moreover, the affidavit is not reliable. "[A]ffidavits which recant witnesses' trial testimony are viewed with extreme suspicion by the courts." *Baldree v. Johnson*, 99 F.3d 659 (5th Cir. 1996)(cert. denied, 590 U.S. 1194 (1997) citing *May v. Collins*, 955 F.2d 299, 314 (5th Cir. 1992); *Summers v. Dretke*, 431 F.3d 861, 878 (5th Cir. 2005); *Spence v. Johnson*, 80 F.3d 989, 1003 (5th Cir.1996). Petitioner presented this affidavit to the state habeas court, which denied the claim without a written order. *Ex parte Williams*, WR-81,328-01, Texas Judicial Branch online case search, <http://www.search.txcourts.gov/Case.aspx?cn=WR-81,328-01&coa=coscca>.

Again, when the Texas Court of Criminal Appeals denies relief in a state habeas corpus application without written order, it is an adjudication on the merits

which is entitled to the presumption of correctness. *Singleton v. Johnson*, 178 F.3d 381, 384 (5th Cir. 1999); *Ex parte Torres*, 943 S.W.2d 469, 472 (Tex. Crim. App. 1997). The state court implicitly concluded that the witness's recantation lacked trustworthiness and credibility. This finding is entitled to a presumption of correctness, and Petitioner has failed to offer the clear and convincing evidence necessary to overcome that presumption. See *May v. Collins*, 955 F.2d 299, 313–14 (5th Cir. 1992) (overruled on other grounds, *Duncan v. Cockrell*, 70 F. App'x 741 (5th Cir. Jul.3, 2003)). Accordingly, the Court should deny this claim.

#### Denial of Due Process

In his second claim, Petitioner alleges that the state courts denied him due process when “the district clerk transmitted the 11.07 writ to the Court of Criminal Appeals without an answer by the District Attorney or findings of fact or conclusions of law. The Court of Criminal Appeals denied without written order. The Constitutional claims have never been heard by any State court.” Pet. at 6. First, the fact that the state courts did not produce a written order does not mean that the court did not address Petitioner's claim; the Court of Criminal Appeals' denial of the 11.07 writ application is an adjudication on the merits, which is entitled to the presumption of correctness. *Singleton v. Johnson*, 178 F.3d 381, 384 (5th Cir. 1999); *Ex parte Torres*, 943 S.W.2d 469, 472 (Tex. Crim. App. 1997).

Second, the Fifth Circuit has held that claims alleging infirmities in state habeas proceedings do not constitute grounds for relief in federal court. *Trevino v. Johnson*, 168 F.3d 173, 181 (5th Cir. 1999)(quoting *Hallmark v. Johnson*, 118 F.3d

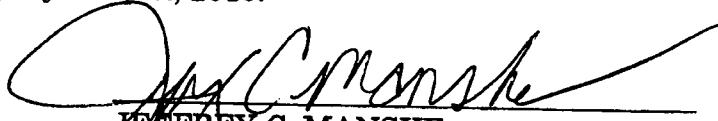
1073, 1080 (5th Cir. 1997), cert. denied, *Johnson v. Monroe*, 522 U.S. 1003, (1997); see *Nichols v. Scott*, 69 F.3d 1255, 1275 (5th Cir. 1995) (“An attack on a state habeas proceeding does not entitle the petitioner to habeas relief in respect to his conviction, as it is an attack on a proceeding collateral to the detention and not the detention itself.”) (internal quotation marks omitted); *Duff-Smith v. Collins*, 973 F.2d 1175, 1182 (5th Cir. 1992); *Millard v. Lynaugh*, 810 F.2d 1403, 1410 (5th Cir. 1987) (same); *Vail v. Procunier*, 747 F.2d 277, 277 (5th Cir. 1984) (denying petitioner a certificate of probable cause because “[i]nfirmities in state habeas corpus proceedings do not constitute grounds for federal habeas relief”). Accordingly, insofar as Petitioner challenges the propriety of the state’s habeas corpus proceedings, the claim should be denied.

### III. RECOMMENDATION

It is the recommendation of the undersigned that the instant petition be **DENIED**. The parties may wish to file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. See *Battle v. United States Parole Comm’n*, 834 F.2d 419, 421 (5th Cir. 1987). A party’s failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall

bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

SIGNED this 7<sup>th</sup> day of April, 2016.

  
JEFFREY C. MANSKE,  
UNITED STATES MAGISTRATE JUDGE

Decision Of  
United States Court Of Appeals  
Fifth Circuit

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

\_\_\_\_\_  
No. 16-50930  
USDC No. 6:15-CV-108  
\_\_\_\_\_



Certified as a true copy and issued  
as the mandate on Jul 31, 2017

STEVE MONTRELL WILLIAMS,

Attest:

*John W. Cayer*  
Clerk, U.S. Court of Appeals, Fifth Circuit

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

\_\_\_\_\_  
Appeal from the United States District Court for the  
Western District of Texas, Waco  
\_\_\_\_\_

ORDER:

Steve Montrell Williams, Texas prisoner # 1757890, seeks a certificate of appealability (COA) so that he may appeal the district court's denial of his 28 U.S.C. § 2254 application by which Williams challenged his jury conviction of aggravated robbery and his sentence of 20 years in prison. Williams argues that he is actually innocent, as demonstrated by his codefendant's recently written affidavit recanting his testimony and asserting that he testified against Williams because he was threatened by a police detective that he would otherwise face life in prison. Williams further argues that his state habeas proceeding did not comport with due process.

Appendix E

No. 16-50930

Before he can appeal, Williams must obtain a COA, which can be issued only if he “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Williams has not made that showing because he has not “demonstrat[ed] that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327. Accordingly, a CCA is DENIED.

/s/ Leslie H. Southwick  
LESLIE H. SOUTHWICK  
UNITED STATES CIRCUIT JUDGE

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

July 31, 2017

Ms. Jeannette Clack  
Western District of Texas, Waco  
United States District Court  
800 Franklin Avenue  
Waco, TX 76701

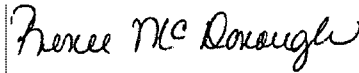
No. 16-50930     Steve Williams v. Lorie Davis, Director  
USDC No. 6:15-CV-108

Dear Ms. Clack,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Renee S. McDonough, Deputy Clerk  
504-310-7673

cc w/encl:

Mr. Edward Larry Marshall  
Mr. Steve Montrell Williams

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

September 05, 2017

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 16-50930     Steve Williams v. Lorie Davis, Director  
USDC No. 6:15-CV-108

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

*Renee MC Donough*

By: \_\_\_\_\_  
Renee S. McDonough, Deputy Clerk  
504-310-7673

Mr. Edward Larry Marshall  
Mr. Steve Montrell Williams

*Del 4*

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 16-50930

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STEVE MONTRELL WILLIAMS,

Petitioner - Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

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Appeal from the United States District Court for the  
Western District of Texas, Waco

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ON PETITION FOR REHEARING EN BANC

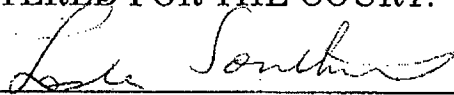
Before DENNIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:

- ( ☒ ) Treating the Petition for Rehearing En Banc as a Motion for Reconsideration, the Motion for Reconsideration is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED R. APP. P. and 5<sup>TH</sup> CIR. R. 35), the Petition for Rehearing En Banc is DENIED.
- ( ) Treating the Petition for Rehearing En Banc as a Motion for Reconsideration, the Motion for Reconsideration is DENIED. The court

having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED R. APP. P. and 5<sup>TH</sup> CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

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UNITED STATES CIRCUIT JUDGE

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