

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-30408



A True Copy
Certified order issued Apr 03, 2018

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

LAWRENCE WILLIAMS,

Petitioner-Appellant

v.

SANDY MCCAIN, WARDEN, RAYMOND LABORDE CORRECTIONAL
CENTER,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana

Before DENNIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:

Lawrence Williams, Louisiana prisoner # 98782, moves this court for a certificate of appealability (COA) to appeal the denial of his Federal Rule of Civil Procedure 60(b) motion, wherein he sought to challenge the denial of his 28 U.S.C. § 2254 application based on new evidence. He also requests authorization to file a successive § 2254 application and the appointment of counsel on appeal. Williams seeks to challenge the victims' identification of him in light of the initial descriptions they gave to police in support of his argument that counsel was ineffective for failing to call the police officers who wrote those reports to challenge the victims' trial testimony and the trial testimony of Detective Baldwin. He also argues that he is actually innocent.

No. 17-30408

Williams is required to obtain a COA to appeal the denial of his Rule 60(b) motion. *See Ochoa Canales v. Quarterman*, 507 F.3d 884, 887-88 (5th Cir. 2007). To obtain a COA, a movant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A movant satisfies this standard by showing 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 v. Cockrell*, 537 U.S. 322, 327 (2003). Because Williams fails to make the requisite showing, IT IS ORDERED that his motion for a COA is DENIED. IT IS FURTHER ORDERED that his motion for appointment of appellate counsel is DENIED.

To the extent Williams contends that he should be allowed to proceed with a successive § 2254 application, his argument is unavailing. This court may authorize the filing of a successive application only if Williams makes a prima facie showing that (1) his “claim[s] rel[y] on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court” or (2) “the factual predicate for the claim[s] could not have been discovered previously through the exercise of due diligence” and the facts establish that, “but for constitutional error, no reasonable factfinder would have found [Williams] guilty of the underlying offense.” 28 U.S.C. § 2244(b)(2)(A), (B), (b)(3)(C). “A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.” § 2244(b)(1). Williams fails to make the prima facie showing required for authorization. *See* § 2244(b)(1); *McQuiggin v. Perkins*, 569 U.S. 383, 391-93 (2013); *In re Sepulvado*, 707 F.3d 550, 554 (5th Cir. 2013). IT IS ORDERED that his motion to file a successive § 2254 application is DENIED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LAWRENCE WILLIAMS

CIVIL ACTION

V.

NO. 13-145

SANDY MCCAIN, WARDEN

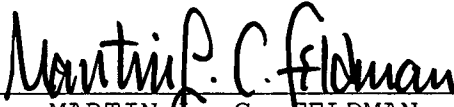
SECTION "F"

ORDER AND REASONS

Before the Court is the petitioner's Rule 60(b) motion for relief from judgment. This Court reviewed the petitioner's federal habeas petition and denied the petition with prejudice on May 29, 2014. On May 30, 2014, the Court denied the petitioner's certificate of appealability. Because the Court denied the petition on the merits and the petitioner now seeks another review of the merits of his claims based on alleged new information, this petition is deemed a second or successive petition.

This Court lacks jurisdiction to consider this Rule 60(b) motion because Williams did not obtain prior authorization pursuant to 28 U.S.C. § 2244(b)(3)(A) to file a second or successive petition. Adams v. Thaler, 679 F.3d 312, 321 (5th Cir. 2012). Accordingly, IT IS ORDERED: that Williams' Rule 60(b) motion is DENIED without prejudice.

New Orleans, Louisiana, May 3, 2017



MARTIN L. C. FELDMAN
UNITED STATES DISTRICT JUDGE

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