

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

No. 17-20106



A True Copy
Certified order issued Dec 13, 2017

Style W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

CHARLES RAY WALTON,

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 Southern District of Texas

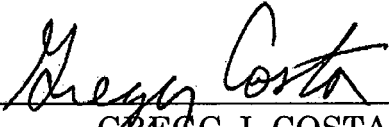
O R D E R:

Charles Ray Walton, Texas prisoner # 1356490, moves for a certificate of appealability (COA) to appeal the denial of his Federal Rule of Civil Procedure 60(b) motion, by which he sought to vacate the district court's dismissal of his 28 U.S.C. § 2254 petition challenging his conviction and sentence for aggravated sexual assault of a child. Walton also moves to supplement and amend his COA motion with additional arguments.

In his Rule 60(b) motion, Walton merely reargued the merits of his previously denied § 2254 claims. Thus, the motion was, in effect, a successive § 2254 petition, which the district court lacked jurisdiction to consider absent prior authorization from this court. *See Adams v. Thaler*, 679 F.3d 312, 319 (5th Cir. 2012); 28 U.S.C. § 2244(b)(3)(A). Consequently, Walton's challenge

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does not deserve encouragement to proceed further. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Accordingly, IT IS ORDERED that Walton's motions to supplement and to amend his COA motion are GRANTED. The motion for a COA is DENIED.



GREGG J. COSTA
UNITED STATES CIRCUIT JUDGE

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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 Southern District of Texas

Before HIGGINBOTHAM, JONES, and COSTA, Circuit Judges.

PER CURIAM:

A member of this panel previously granted appellant's motions to supplement and to amend his motion for certificate of appealability (COA), and further denied the motion for COA. The panel has considered appellant's motion for reconsideration of the denial of COA. IT IS ORDERED that the motion is DENIED.

ENTERED

February 01, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHARLES RAY WALTON,

Plaintiff,

v.

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

Defendant.

W

CIVIL ACTION NO. H-14-2370

ORDER

Pending is Petitioner's Motion to Alter/Amend/Vacate Judgment (Document No. 70), in which Petitioner, citing Federal Rule of Civil Procedure 60(b), seeks relief from the Final Judgment entered in this case, alleging that many of the Court's factual recitations "are incorrect and/or misrepresented in a manner to create prejudice, and because of these actions [Petitioner] has not been fairly heard on his claims."¹

The Court has carefully considered Petitioner's motion and finds that the arguments made largely reiterate those made when his Section 2254 petition was adjudicated and, presumably, arguments that Petitioner made to the United States Court of Appeals for the Fifth Circuit in his motion for a certificate of appealability from this Court's Final Judgment.

¹ Motion at 2.

The Court of Appeals, however, by Order filed October 5, 2016, found that Petitioner had failed to make the requisite showing for issuance of a certificate of appealability. On this record, there is no factual or legal basis under Federal Rule of Civil procedure 60(b) for an alteration or amendment of the Judgment. Petitioner's motion (Document No. 70) is therefore DENIED.²

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

SIGNED at Houston, Texas, on this 1ST day of February, 2017.


EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE

² In the alternative, if Petitioner's motion is construed as a second or successive Section 2254 petition, then Petitioner first must obtain an order from the Court of Appeals authorizing this Court to consider the motion. See Rule 9 of the Rules Governing Section 2254 Cases. Because Petitioner has not done so, this Court would be obliged to dismiss the motion without prejudice for lack of jurisdiction. See 28 U.S.C. § 2244(b).

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