

EXHIBITS

Exhibit B: Order denying state
habeas corpus in Osage
County District Court

Exhibit C: OCCA Order affirming
denial of state habeas
corpus

Exhibit 12: Order from N.D. of OK
Dismissing without
prejudice 2254 petition

Exhibit 13: Tenth Circuit Order
denying COA

Exhibit E: This Court's order
deny certiorari on his
challenge to Oklahoma's
legal existence

Exhibit F: Tenth circuit order
denying authorization
to file successive
2254 petition

Exhibit D: Tenth Circuit order
denying request to
issue mandamus to
state court(s)

66 Appendix B 77

5

IN THE DISTRICT COURT IN AND FOR OSAGE COUNTY District Court, Osage County, Okla.
STATE OF OKLAHOMA FILED

In Re Habeas Corpus of:
Dexter Leemon Johnson

)
)
)
)
)

APR 19 2023

JENNIFER BURD, Court Clerk
By SMA Deputy

WH-2022-3

Exhibit B

ORDER

Petitioner filed his Writ of Habeas Corpus on Defendant filed his Application for Post-conviction Relief on October 17, 2022. No service on any named respondent has been issued. The Court has reviewed the relief requested and it appears Petitioner is claiming the District Court of Muskogee County, Oklahoma was without subject matter jurisdiction in CF-1994-995. The proper vehicle to pursue the requested relief is through the Oklahoma Post-Conviction Procedure Act.

Petitioner's requested relief is not proper in Osage County through a Writ of Habeas Corpus.

Writ Denied.

Dated this 19th day of April, 2023.

IT IS SO ORDERED.


Stuart L. Tate
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of April, 2023 I mailed by first class mail postage prepaid a copy of the foregoing instrument to:

Dexter Leemon Johnson
D.C.C.C.
129 Conner Road.
Hominy, OK 74035

STATE OF OKLAHOMA
COUNTY OF OSAGE

ss
Petitioner.

JENNIFER BURD, COURT CLERK, is and for
I, the County Clerk, do hereby certify that the
Petitioner and I, the Clerk, are not on the same side
of the case and now do reside in my office at
701 N. 21st Street, Oklahoma City, Oklahoma, we have been appointed of record.

Witnessed and signed this 26th day of April, 2023
JENNIFER BURD, COURT CLERK

By SMA Deputy

Shirley Spears
Bailiff

66 Appendix B 77

3

HC-2023-445
Osage County
Case No. WH-2022-3
Honorable Stuart L. Tate
District Judge

DEXTER L. JOHNSON v. THE
STATE OF OKLAHOMA

Exhibit C

ORDER DECLINING JURISDICTION

Rule 10.3, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2023) requires an applicant seeking extraordinary relief to serve notice on the adverse party when requesting relief from this Court. Petitioner has failed to give adequate notice to the proper party. The Court **DECLINES** jurisdiction and **DISMISSES** this matter.

CONCUR: Rowland, P.J.; Hudson, V.P.J.; Lumpkin, J.; Lewis, J.; Musseman, J.

4

MA-2023-261
Comanche County
Case No. CF-2018-490
Honorable Grant D. Sheperd
District Judge

RAHEEM L. PLATER v. THE
STATE OF OKLAHOMA

ORDER DISMISSING REQUEST AS MOOT

On March 28, 2023, the District Court fully adjudicated Petitioner's complaints regarding the pending matters in this case. Petitioner's request for a Writ of Mandamus is therefore **MOOT** and is **DISMISSED**.

CONCUR: Rowland, P.J.; Hudson, V.P.J.; Lumpkin, J.; Lewis, J.; Musseman, J.

Exhibit C

Exhibit 12, p. 1 of 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEXTER LEEMON JOHNSON,)
Petitioner,)
v.) Case No. 24-CV-0097-GKF-MTS
RANDY HARDING,)
Respondent.)

ORDER

This matter is before the Court on Petitioner Dexter Leemon Johnson's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Dkt. 9).¹ Johnson, a self-represented Oklahoma prisoner presently incarcerated at the Dick Conner Correctional Center in Hominy, Oklahoma, brings this federal habeas action to challenge the validity of his conviction, in Muskogee County District Court Case No. CF-1994-995.² District courts must "promptly examine" a habeas petition and dismiss the petition "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." Rule 4, *Rules Governing Section 2254 Cases in the United States District Courts*. The Court finds and concludes that summary dismissal is appropriate in this case because it is plainly apparent from the Petition that the Petition is an unauthorized successive petition that must be dismissed for lack of jurisdiction.

The Petition is successive because Johnson previously filed two § 2254 petitions in the

¹ Johnson filed an Amended Motion for Leave to Proceed In Forma Pauperis on April 10, 2024 (Dkt. 9). Five days later, he paid the requisite \$5 filing fee (Dkt. 11). The Court therefore denies as moot the Amended Motion.

² Because Oklahoma has more than one judicial district, a state prisoner may file a § 2254 petition either in the district of confinement or the district of conviction. 28 U.S.C. § 2241(d).

Exhibit 12, p. 1 of 4

Exhibit 12, p. 2 of 4

United States District Court for the Eastern District of Oklahoma challenging the validity of the same state-court judgment he seeks to challenge through this action. Dkt. 8, at 1, 8; Dkt. 9, at 12; *see Burton v. Stewart*, 549 U.S. 147, 153 (2007) (explaining that habeas petition was second or successive, within the meaning of 28 U.S.C. § 2244(b), when petitioner “twice brought claims contesting the same custody imposed by the same judgment of a state court”). In 2003, the court dismissed Johnson’s first § 2254 petition as barred by the applicable one-year statute of limitations. *Johnson v. Fatkin*, No. CIV 02-668-JHP-KEW (E.D. Okla. June 24, 2003). In 2011, the court dismissed Johnson’s second § 2254 petition both as barred by the applicable statute of limitations and as an unauthorized successive petition. *Johnson v. Workman*, No. CIV 10-107-RW-KEW, 2011 WL 13185999 (E.D. Okla. July 27, 2011). The United States Court of Appeals for the Tenth Circuit subsequently denied a certificate of appealability and dismissed Johnson’s appeal from the denial of his second petition. *Johnson v. Workman*, 446 F. App’x 92 (10th Cir. Nov. 1, 2011). Because both prior petitions were dismissed as barred by the statute of limitations, and the second was additionally dismissed as successive, the Petition (Johnson’s third) is a successive petition governed by 28 U.S.C. § 2244(b). *See In re Rains*, 659 F.3d 1274, 1275 (10th Cir. 2011) (*per curiam*) (“The dismissal of [the petitioner’s] first habeas petition as time-barred was a decision on the merits, and any later habeas petition challenging the same conviction is second or successive and is subject to the AEDPA requirements.”).

The Petition also is unauthorized. Under § 2244(b)(3)(A), a petitioner must obtain authorization from the appropriate court of appeals before filing a second or successive habeas petition in district court. Johnson appears to argue that he is exempt from § 2244(b)(3)(A)’s prior authorization requirement because he asserts new claims not raised in his prior petitions, including a claim that his judgment is “void” because Oklahoma lacked jurisdiction to prosecute him. Dkt.

Exhibit 12, p. 2 of 4

Exhibit 12, p. 3 of 4

9, at 13-14. But § 2244(b)(3)(A) applies regardless of whether a petitioner raises previously presented claims or newly presented claims. *See 28 U.S.C. § 2244(b)(3)(A)* (“Before a second or successive application permitted by [§ 2244(b)] is filed in the district court, the [petitioner] shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.”); *Case v. Hatch*, 731 F.3d 1015, 1029 (10th Cir. 2013) (noting that “only after the appropriate court of appeals has granted an order authorizing the district court to consider the application will the district court be able to proceed” with applying § 2244(b)’s framework). And Johnson neither alleges nor shows that he obtained authorization from the United States Court of Appeals for the Tenth Circuit to file a successive petition before he filed the Petition. Dkts 8, 9.

Because the Petition is an unauthorized successive petition, the Court concludes that the Petition should be dismissed without prejudice for lack of jurisdiction. *See In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (*per curiam*) (“A district court does not have jurisdiction to address the merits of a second or successive . . . § 2254 claim until [the court of appeals] has granted the required authorization.”).³ And, because the absence of jurisdiction presents a clear procedural bar that precludes habeas relief, the Court declines to issue a certificate of appealability. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); Rule 11, *Rules Governing Section 2254 Cases in the United States District Courts*.

IT IS THEREFORE ORDERED that:

1. the Amended Motion for Leave to Proceed In Forma Pauperis (Dkt. 7) is **denied as**

moot;

Exhibit 12, p. 3 of 4

³ The Court could transfer this matter to the United States Court of Appeals for the Tenth Circuit as an alternative to dismissal. *See Cline*, 531 F.3d at 1252. But that would be a waste of judicial resources because the Petition, like Johnson’s first and second petitions, appears to be barred by the statute of limitations.

2. the Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Dkt. 9) is **dismissed without prejudice** for lack of jurisdiction;
3. a certificate of appealability is **denied**;
4. a separate judgment of dismissal shall be entered in this matter; and
5. the Clerk of Court shall send, electronically, a courtesy copy of this Order and the Judgment of Dismissal to the Office of the Attorney General for the State of Oklahoma at fhc.docket@oag.ok.gov.

DATED this 16th day of April, 2024.

Gregory K. Frizzell
GREGORY K. FRIZZELL
UNITED STATES DISTRICT JUDGE

Exhibit 12, p. 4 of 4

Exhibit 13, p. 1 of 3

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

August 9, 2024

Christopher M. Wolpert
Clerk of Court

DEXTER LEEMON JOHNSON,

Petitioner - Appellant,

v.

RANDY HARDING,

Respondent - Appellee.

No. 24-5048
(D.C. No. 4:24-CV-00097-GKF-MTS)
(N.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before PHILLIPS, CARSON, and FEDERICO, Circuit Judges.

Dexter Leemon Johnson, an Oklahoma prisoner proceeding pro se, seeks a certificate of appealability (COA) to appeal from the district court's order dismissing his third 28 U.S.C. § 2254 habeas petition for lack of jurisdiction as an unauthorized successive petition. We deny a COA and dismiss this matter.

An Oklahoma jury found Mr. Johnson guilty of shooting with intent to kill. The Oklahoma Court of Criminal Appeals affirmed his conviction. Mr. Johnson filed his first § 2254 habeas petition in 2002 in the Eastern District of Oklahoma. The district court dismissed the petition as time-barred. He did not appeal the district court's decision.

Exhibit 13, p. 1 of 3

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Exhibit 13, p. 2 of 3

In 2010, Mr. Johnson filed a second § 2254 habeas petition in the Eastern District of Oklahoma, which the district court dismissed as an unauthorized second or successive habeas petition.

In March 2024, Mr. Johnson initiated an action in the Northern District of Oklahoma by filing a “Motion for Relief from Judgment Pursuant to FRCP 60(b)(4).” R. at 4. In that filing, Mr. Johnson asserted that he was challenging his state conviction and argued it should be vacated. The district court dismissed that motion, explaining that a Rule 60(b)(4) motion “is not the proper procedural vehicle for a state prisoner to initiate an action challenging the lawfulness of his or her state criminal judgment.” R. at 71. The court, however, gave Mr. Johnson leave to file a § 2254 habeas petition.

Mr. Johnson then filed his third § 2254 habeas petition. The district court dismissed that petition as an unauthorized second or successive habeas petition.

Mr. Johnson now seeks a COA to appeal from the district court’s dismissal order.

To obtain a COA where, as here, a district court has dismissed a filing on procedural grounds, Mr. Johnson 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). We need not address the constitutional question if we conclude that reasonable jurists would not debate the district court’s resolution of the procedural one. *Id.* at 485.

A state prisoner, like Mr. Johnson, may not file a second or successive § 2254 habeas petition unless he first obtains an order from this court authorizing the district

Exhibit 13, p. 2 of 3

Exhibit 13, p. 3 of 3

court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Absent such authorization, a district court lacks jurisdiction to address the merits of a second or successive § 2254 habeas petition. *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008).

Mr. Johnson argues the district court denied him “due process by arbitrarily amending and repealing operation of FRCP 60(b)(4),” COA App. at 5 (capitalization in original omitted), exceeded its jurisdiction by granting itself authority to consider a successive § 2254, and abused its discretion by failing to transfer his unauthorized § 2254 habeas petition to this court.¹ He also argues that all Oklahoma laws are void and his conviction constitutes a denial of due process.

But none of these arguments address the district court’s dispositive procedural ruling, and Mr. Johnson does not dispute he filed a successive § 2254 habeas petition without authorization from this court. Because Mr. Johnson has failed to show that jurists of reason would debate the correctness of the district court’s procedural ruling dismissing his unauthorized successive § 2254 habeas petition for lack of jurisdiction, we deny a COA and dismiss this matter. We grant Mr. Johnson’s motion for leave to proceed without prepayment of costs or fees.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

¹ The district court explained that transferring the habeas petition to this court was not appropriate because the current petition, “like Johnson’s first and second petitions, appears to be barred by the statute of limitations.” R. at 167. We see no abuse of discretion in the district court’s decision not to transfer Mr. Johnson’s unauthorized successive habeas petition to this court.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

October 30, 2023

Scott S. Harris
Clerk of the Court
(202) 479-3011

Mr. Dexter Leemon Johnson
Prisoner ID 244661
129 Connor Rd.
Hominy, OK 74035

Exhibit E

Re: Dexter Leemon Johnson
v. Oklahoma
No. 23-5463

Dear Mr. Johnson:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

Exhibit E

* Deadline Date: November 27, 2023.

Exhibit F, p. 1 of 2

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

January 21, 2025

Christopher M. Wolpert
Clerk of Court

In re: DEXTER JOHNSON,
Movant.

No. 25-5001
(D.C. No. 4:24-CV-00097-GKF-MTS)
(N.D. Okla.)

ORDER

Before HARTZ, EBEL, and TYMKOVICH, Circuit Judges.

Dexter Johnson, proceeding pro se, moves for authorization to file a second or successive 28 U.S.C. § 2254 application challenging his 1996 Oklahoma conviction for shooting with intent to kill. We deny authorization.

Because Johnson previously pursued relief under § 2254, he must obtain this court's authorization before he can file another § 2254 application in the district court. *See* 28 U.S.C. § 2244(b)(3)(A). We must determine whether his "application makes a *prima facie* showing" that it satisfies the requirements for authorization. § 2244(b)(3)(C). We may authorize a claim only if it (1) "relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," § 2244(b)(2)(A); or (2) relies on facts that could not have been discovered previously through due diligence and that establish the petitioner's innocence by clear and convincing evidence, § 2244(b)(2)(B).

Exhibit F, p. 1 of 2

Exhibit F, p. 2 of 2

Johnson identifies eight proposed claims.¹ He concedes, however, that none of his claims relies on either newly discovered facts or a new rule of constitutional law made retroactive by the Supreme Court. He asserts that certain claims involve *McGirt v. Oklahoma*, 591 U.S. 894 (2020), but “*McGirt* announced no new constitutional right,” *Pacheco v. Habi*, 62 F.4th 1233, 1246 (10th Cir.), *cert. denied*, 143 S. Ct. 2672 (2023). Nor would it establish Johnson’s innocence. *See id.* at 1244-45 (rejecting proposition that lack of jurisdiction establishes factual innocence). In short, Johnson’s motion does not make a *prima facie* showing that his claims satisfy the requirements for authorization.

We deny the motion for authorization. This denial of authorization “shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.” § 2244(b)(3)(E).

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

Exhibit F,
p. 2 of 2

¹ He identifies these claims as: (1) “all Oklahoma laws are void due to its admission into union being repugnant to Art. IV, § 3, Cl. 1 of U.S. Constitution,” Mot. for Auth. at 8 (capitalization omitted); (2) his “conviction is void as denial of due process in that Art. 1, § 3 of OK Const prohibits Oklahoma from exercising jurisdiction on Indian land,” *id.* at 9 (capitalization omitted); (3) “conviction under void law cannot be legal cause of imprisonment,” *id.* at 10(a) (capitalization omitted); (4) the Antiterrorism and Effective Death Penalty Act (AEDPA) “is unconstitutional as-applied to void judgment [he] suffered,” *id.* at 10(b) (capitalization omitted); (5) he has a constitutional right to a merits ruling on his challenge to Oklahoma’s existence as a state; (6) there is no time limitation on challenging a void judgment; (7) state and federal courts have denied him his right to access the courts to challenge the existence of Oklahoma as a state; and (8) the Due Process Clause is superior to AEDPA’s limitations period with regard to challenges to void judgments.

Exhibit ~~D~~ D

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In re: DEXTER LEEMON JOHNSON,
Petitioner.

FILED
United States Court of Appeals
Tenth Circuit

June 1, 2023

Christopher M. Wolpert
Clerk of Court

No. 23-7030

ORDER

Before HARTZ, PHILLIPS, and EID, Circuit Judges.

Dexter Leemon Johnson, proceeding pro se, seeks a writ of mandamus requiring the Oklahoma Court of Criminal Appeals to refer three jurisdictional issues arising in his state habeas proceeding to this court or to the Supreme Court for resolution. We have no authority, however, to issue a writ of mandamus to a state court. *See Knox v. Bland*, 632 F.3d 1290, 1292 (10th Cir. 2011); *Van Sickle v. Holloway*, 791 F.2d 1431, 1436 n.5 (10th Cir. 1986). And in any event, Mr. Johnson has not shown that his right to relief is “clear and indisputable.” *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1187 (10th Cir. 2009) (internal quotation marks omitted). Accordingly, the petition for a writ of mandamus is denied. Mr. Johnson’s motion to proceed without prepayment of costs and fees is granted.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

Exhibit D