

APPENDIX

A

CLERK'S OFFICE
UNITED STATES DISTRICT COURT
Middle District of Louisiana
777 Florida Street, Suite 139
Baton Rouge, LA 70801-1712

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Rolondo Stewart 631620
Allen Correctional Center
3751 Lauderdale Woodyard Road
Kinder, LA 70648

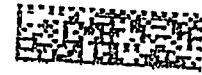
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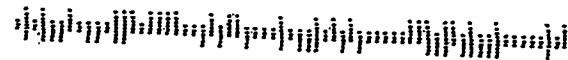
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Kinder, LA 70648

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Allen Correctional Center
3751 Lauderdale Woodyard Road
Kinder, LA 70648

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

ROLONDO STEWART (#631620)

CIVIL ACTION NO.

VERSUS

22-711-JWD-EWD

WARDEN KEITH COOLEY, ET AL.

OPINION

After independently reviewing the entire record in this case and for the reasons set forth in the Magistrate Judge's Report dated January 26, 2024 (Doc. 13), to which an objection was filed and considered (Doc. 14),

As the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody filed by Rolondo Stewart (Doc. 1) is untimely, **IT IS ORDERED** that the application is **DENIED** and that this proceeding shall be **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that, if Petitioner seeks to pursue an appeal in this case, a certificate of appealability shall be **DENIED**.

Judgment shall be entered accordingly.

Signed in Baton Rouge, Louisiana, on February 16, 2024.



JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

Subject:Activity in Case 3:22-cv-00711-JWD-EWD Stewart v. Cooley et al OPINION Adopting Report and Recommendation

U.S. District Court Middle District of Louisiana

Notice of Electronic Filing The following transaction was entered on 2/16/2024 2:56 PM CST and filed on 2/16/2024

Case Name: Stewart v. Cooley et al

Case Number: 3:22-cv-00711-JWD-EWD <https://ecf.lamd.uscourts.gov/cgi-bin/DktRpt.pl?61176>

Filer:

Document Number: 15

Docket Text: OPINION adopting [13] Report and Recommendations, of the U.S. Magistrate Judge. The application is DENIED and that this proceeding

shall be DISMISSED WITH PREJUDICE. If Petitioner seeks to pursue an appeal in this case, a certificate of appealability shall be DENIED. Judgment shall be entered accordingly. Signed by Judge John W. deGravelles on 2/16/2024. (EDC)

3:22-cv-00711-JWD-EWD Notice has been electronically mailed to: Donald David Candell dcan-dell@eatel.net

Lindsey Manda lmanda.ada@23jda.com

3:22-cv-00711-JWD-EWD Notice has been delivered by other means to: Rolondo Stewart 631620 Allen Correctional Center 3751 Lauderdale Woodyard Road Kinder, LA 70648

Rolondo Stewart 631620
Allen Correctional Center
3751 Lauderdale Woodyard Road
Kinder, LA 70648

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

ROLONDO STEWART (#631620)

CIVIL ACTION NO.

VERSUS

22-711-JWD-EWD

WARDEN KEITH COOLEY, ET AL.

JUDGMENT

For written reasons assigned,

IT IS ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered, denying the Application under 28 U.S.C. § 2254 for Writ of Habeas Corpus and dismissing this proceeding with prejudice.

Signed in Baton Rouge, Louisiana, on February 16, 2024.



JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

Subject:Activity in Case 3:22-cv-00711-JWD-EWD Stewart v. Cooley et al Judgment

U.S. District Court Middle District of Louisiana

Notice of Electronic Filing The following transaction was entered on 2/16/2024 2:58 PM CST and filed on 2/16/2024

Case Name: Stewart v. Cooley et al

Case Number: 3:22-cv-00711-JWD-EWD <https://ecf.lamd.uscourts.gov/cgi-bin/DktRpt.pl?61176>

Filer:

WARNING: CASE CLOSED on 02/16/2024

Document Number: 16

Docket Text: JUDGMENT is hereby entered, denying the Application under 28 U.S.C. § 2254 for Writ of Habeas Corpus and dismissing this proceeding with prejudice. Signed by Judge John W. deGravelles on 2/16/2024. (EDC)

3:22-cv-00711-JWD-EWD Notice has been electronically mailed to: Donald David Candell dcan-dell@eatel.net

Lindsey Manda lmandada@23jda.com

3:22-cv-00711-JWD-EWD Notice has been delivered by other means to: Rolondo Stewart 631620 Allen Correctional Center 3751 Lauderdale Woodyard Road Kinder, LA 70648

Rolondo Stewart 631620
Allen Correctional Center
3751 Lauderdale Woodyard Road
Kinder, LA 70648

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

IN THE MATTER OF RETENTION OF
SEALED DOCUMENTS FOLLOWING
THE CLOSURE OF A CASE RECORD

GENERAL ORDER
NO. 2019-4

GENERAL ORDER

IT IS ORDERED that all pleadings and other papers filed under seal in civil and criminal actions shall be maintained under seal for thirty days following final disposition of the action. After that time, all sealed pleadings and other papers shall be placed in the case record unless a District Judge or Magistrate Judge, upon motion and for good cause shown, orders that the pleading or other paper be maintained under seal. The following pleadings and other papers are excluded from this order and shall remain under seal:

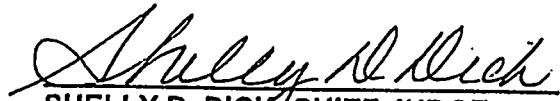
Grand Jury proceedings and any pleading related thereto, including Grand Jury testimony;
Statement of Reasons;
Character Letters;
5K1.1 Motions and any pleading related thereto;
Psychiatric Reports and Medical Records;
Sentencing Memoranda and any pleading related thereto;
Proposed pleadings that have been denied leave of court to be filed;
Unredacted Indictments (which contain the Jury Foreperson's name/signature);
Sealed Plea Agreement Supplements shall remain under seal pursuant to General Order 16-14;
Sealed court records identified in General Order 07-08 shall remain sealed in accordance with said order.

IT IS FURTHER ORDERED that the Clerk of Court is directed to file this General Order in the record of all civil and criminal cases upon the issuance of a final judgment or dismissal.

IT IS FURTHER ORDERED that the deadline for filing any motions regarding the unsealing of any document shall be within thirty days of the final disposition of any action and shall contain a concise statement of reasons for maintaining the pleading or other paper under seal.

IT IS FURTHER ORDERED that General Order Number 93-1 is hereby VACATED.

Baton Rouge, Louisiana, this 8 day of July, 2019.


SHELLY D. DICK, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

Subject:Activity in Case 3:22-cv-00711-JWD-EWD Stewart v. Cooley et al Notice to Counsel - General
Order 2019-04

U.S. District Court Middle District of Louisiana

Notice of Electronic Filing The following transaction was entered on 2/16/2024 2:58 PM CST and filed on 2/16/2024

Case Name: Stewart v. Cooley et al

Case Number: 3:22-cv-00711-JWD-EWD <https://ecf.lamd.uscourts.gov/cgi-bin/DktRpt.pl?61176>

Filer:

WARNING: CASE CLOSED on 02/16/2024

Document Number: 17

Docket Text: GENERAL ORDER: All pleadings and other papers filed under seal in civil and criminal actions shall be maintained under seal for thirty days following final disposition of the action. After that time, all sealed pleadings and other papers shall be placed in the case record unless a District Judge or Magistrate Judge, upon motion and for good cause shown, orders that the pleading or other paper be maintained under seal. <P> The deadline for filing any motions regarding the unsealing of any document shall be within thirty days of the final disposition of any action and shall contain a concise statement of reasons for maintaining the pleading or other paper under seal.<P> <P>ATTENTION:

If a motion to retain documents under seal is NOT filed, all documents shall be placed in the public case record, unless specifically identified in the attached General Order <P> Signed by Chief Judge Shelly D. Dick on 7/8/2019. (EDC)

3:22-cv-00711-JWD-EWD Notice has been electronically mailed to: Donald David Candell dcan-dell@eatel.net

Lindsey Manda lmandada@23jda.com

3:22-cv-00711-JWD-EWD Notice has been delivered by other means to: Rolondo Stewart 631620 Allen Correctional Center 3751 Lauderdale Woodyard Road Kinder, LA 70648

APPENDIX

B

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
F. EDWARD HEBERT BUILDING
600 S. MAESTRI PLACE
NEW ORLEANS, LOUISIANA 70130-3408

OFFICIAL BUSINESS

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Mr. Rolondo Stewart
#631620
Allen Correctional Center
3751 Lauderdale Woodyard Road
Kinder, LA 70648-0000

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FIRST-CLASS MAIL

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24-30152

Mr. Rolondo Stewart
#631620
Allen Correctional Center
3751 Lauderdale Woodyard Road
Kinder, LA 70648-0000

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

July 11, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 24-30152 Stewart v. Cooley
USDC No. 3:22-CV-711

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Roeshawn Johnson

By:
Roeshawn Johnson, Deputy Clerk
504-310-7998

Mr. Donald David Candell
Mr. Michael L. McConnell
Mr. Rolondo Stewart

United States Court of Appeals
for the Fifth Circuit

No. 24-30152

United States Court of Appeals
Fifth Circuit

FILED

July 10, 2024

Lyle W. Cayce
Clerk

ROLONDO STEWART,

Petitioner—Appellant,

versus

KEITH COOLEY, *Warden, Allen Correctional Center,*

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Middle District of Louisiana
USDC No. 3:22-CV-711

ORDER:

Rolondo Stewart, Louisiana prisoner # 631620, seeks a certificate of appealability (COA) to appeal the dismissal of his 28 U.S.C. § 2254 application challenging his convictions for aggravated burglary, obstruction of justice, three counts of accessory after the fact, unauthorized use of a motor vehicle, attempted second degree murder, and introduction of contraband into a penal institution. The district court dismissed the § 2254 application as untimely and because Stewart failed to (i) show that he was entitled to statutory or equitable tolling or (ii) make a sufficient showing of actual innocence to overcome his untimely filing. After the entry of

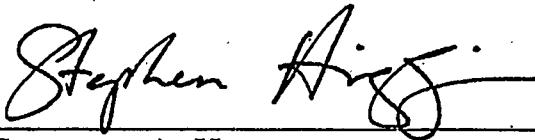
No. 24-30152

judgment, Stewart simultaneously filed a notice of appeal and a motion for a COA, which motion may be liberally construed as challenging the district court's actual innocence determination.

Stewart's postjudgment motion was filed within 28 days of the district court's judgment dismissing his § 2254 application and is properly construed as a motion for reconsideration under Federal Rule of Civil Procedure 59(e). *See FED. R. CIV. P. 59(e); Mangieri v. Clifton*, 29 F.3d 1012, 1015 n.5 (5th Cir. 1994); *United States v. Gallardo*, 915 F.2d 149, 150 n.2 (5th Cir. 1990). However, the record does not reflect that the district court has ruled on the Rule 59(e) motion. Until its disposition, Stewart's notice of appeal is ineffective. *See FED. R. APP. P. 4(a)(4)(B)(i)*. Accordingly, the case is REMANDED for the limited purpose of allowing the district court to expeditiously consider the outstanding Rule 59(e) motion. *See Burt v. Ware*, 14 F.3d 256, 261 (5th Cir. 1994).

If the district court denies the outstanding Rule 59(e) motion, a COA and an amended notice of appeal are required to appeal the denial of that motion. *See Williams v. Thaler*, 602 F.3d 291, 304 (5th Cir. 2010), *overruled on other grounds by Banister v. Davis*, 590 U.S. 504, 521 (2020); Fed. R. App. P. 4(a)(4)(B)(ii).

The instant COA motion shall be HELD IN ABEYANCE until the notice of appeal becomes effective, and the clerk of this court is instructed to process the COA motion immediately upon the return of the case from the district court.



STEPHEN A. HIGGINSON
United States Circuit Judge

CLERK'S OFFICE
UNITED STATES DISTRICT COURT
Middle District of Louisiana
777 Florida Street, Suite 139
Baton Rouge, LA 70801-1712

**OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300**

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Rolondo Stewart 631620
Allen Correctional Center
3751 Lauderdale Woodyard Road
Kinder, LA 70648

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CLERK'S OFFICE
UNITED STATES DISTRICT COURT
Middle District of Louisiana
777 Florida Street, Suite 139
Baton Rouge, LA 70801-1712

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Rolondo Stewart 631620
Allen Correctional Center
3751 Lauderdale Woodyard Road
Kinder, LA 70648

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Rolondo Stewart 631620
Allen Correctional Center
3751 Lauderdale Woodyard Road
Kinder, LA 70648

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROLONDO STEWART (#631620)

CIVIL ACTION NO.

VERSUS

22-711-JWD-EWD

KEITH COOLEY, ET AL.

RULING

Before the Court is a Motion for Certificate of Appealability (“Motion”)¹ filed by the *pro se* Petitioner Rolondo Stewart (“Petitioner”) that is in effect a Motion to Alter or Amend Judgment brought pursuant to Federal Rule of Civil Procedure 59(e), as noted by the United States Court of Appeals for the Fifth Circuit.² The Motion will be denied, and Petitioner should follow the directives provided by the Fifth Circuit if he seeks to continue this litigation.

Petitioner has properly brought this Motion pursuant to Federal Rule of Civil Procedure 59(e), as Petitioner’s Motion was filed within 28 days of the final judgment. For a motion to succeed under Rule 59(e), the party must clearly establish a manifest error of law or fact or present newly discovered evidence.³ A Rule 59(e) motion has a narrow scope and allows a party to either present newly discovered evidence or to correct manifest errors of law or fact.⁴ Arguments that could have been raised before the entry of the judgment including rearguing evidence and legal theories are not the purpose of a Rule 59(e) motion.⁵ It is not proper to use Rule 59(e) to re-litigate or get “a second bite of the apple” on previously addressed issues by the parties or the Court.⁶

¹ R. Doc. 19. Two other “Motions” were also filed; however one is a duplicate of R. Doc. 19 (R. Doc. 21), and the other Motion is a brief in support of the first-filed Motion (R. Doc. 23).

² See *Rolondo Stewart v. Keith Cooley*, App. No. 24-30152 (5th Cir.).

³ *Ross v. Marshall*, 426 F.3d 745, 763 (5th Cir. 2005) (internal quotations omitted).

⁴ *Templet v. HydroChem Inc.*, 367 F.3d 473, 478-79 (5th Cir. 2004).

⁵ *Id.*

⁶ *N. Cypress Med. Ctr. Operating Co. v. Blue Cross Blue Shield of Texas*, 2010 WL 2245075, at *1 (S.D. Tex. Jun. 2, 2010).

Relief from a judgment, due to its narrow scope, is an extraordinary remedy that should not be used often.⁷

On February 16, 2024, this Court dismissed Petitioner's action with prejudice as untimely.⁸ Petitioner's Motion is a clear attempt at getting a second bite at the proverbial apple. The Petition and all evidence filed into the record was previously considered by this Court, and Petitioner now advances the same arguments in support of his claims without providing any additional evidence. Petitioner also has not indicated that there is newly discovered evidence. The purpose of a Rule 59(e) motion is not to allow a petitioner another chance to litigate his claims,⁹ and Petitioner has not shown he is entitled to the extraordinary relief provided by such a motion. Accordingly,

IT IS ORDERED that Petitioner's Motion to Alter or Amend the Judgment¹⁰ is **DENIED**.

IT IS FURTHER ORDERED that the duplicative Motion to Alter or Amend the Judgment¹¹ is **DENIED AS MOOT**, and the Clerk of Court is directed to **TERMINATE** the "Motion" at R. Doc. 23, as it is not a Motion and is, instead, a brief.

Signed in Baton Rouge, Louisiana, on July 12, 2024.



JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

⁷ *Templet*, 367 F.3d at 479.

⁸ R. Docs. 15 & 16.

⁹ *N. Cypress Med. Ctr. Operating Co. v. Blue Cross Blue Shield of Texas*, 2010 WL 2245075, at *1 (S.D. Tex. Jun. 2, 2010).

¹⁰ R. Doc. 19.

¹¹ R. Doc. 21.

Rolondo Stewart 631620
Allen Correctional Center
3751 Lauderdale Woodyard Road
Kinder, LA 70648

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

July 11, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 24-30152 Stewart v. Cooley
USDC No. 3:22-CV-711

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Roeshawn Johnson

By:
Roeshawn Johnson, Deputy Clerk
504-310-7998

Mr. Donald David Candell
Mr. Michael L. McConnell
Mr. Rolondo Stewart

United States Court of Appeals
for the Fifth Circuit

No. 24-30152

United States Court of Appeals
Fifth Circuit

FILED

July 10, 2024

Lyle W. Cayce
Clerk

ROLONDO STEWART,

Petitioner—Appellant,

versus

KEITH COOLEY, *Warden, Allen Correctional Center,*

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Middle District of Louisiana
USDC No. 3:22-CV-711

ORDER:

Rolondo Stewart, Louisiana prisoner # 631620, seeks a certificate of appealability (COA) to appeal the dismissal of his 28 U.S.C. § 2254 application challenging his convictions for aggravated burglary, obstruction of justice, three counts of accessory after the fact, unauthorized use of a motor vehicle, attempted second degree murder, and introduction of contraband into a penal institution. The district court dismissed the § 2254 application as untimely and because Stewart failed to (i) show that he was entitled to statutory or equitable tolling or (ii) make a sufficient showing of actual innocence to overcome his untimely filing. After the entry of

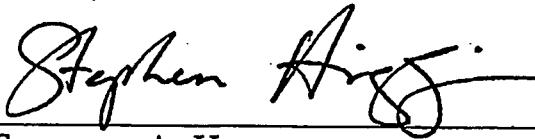
No. 24-30152

judgment, Stewart simultaneously filed a notice of appeal and a motion for a COA, which motion may be liberally construed as challenging the district court's actual innocence determination.

Stewart's postjudgment motion was filed within 28 days of the district court's judgment dismissing his § 2254 application and is properly construed as a motion for reconsideration under Federal Rule of Civil Procedure 59(e). *See FED. R. CIV. P. 59(e); Mangieri v. Clifton*, 29 F.3d 1012, 1015 n.5 (5th Cir. 1994); *United States v. Gallardo*, 915 F.2d 149, 150 n.2 (5th Cir. 1990). However, the record does not reflect that the district court has ruled on the Rule 59(e) motion. Until its disposition, Stewart's notice of appeal is ineffective. *See FED. R. APP. P. 4(a)(4)(B)(i)*. Accordingly, the case is REMANDED for the limited purpose of allowing the district court to expeditiously consider the outstanding Rule 59(e) motion. *See Burt v. Ware*, 14 F.3d 256, 261 (5th Cir. 1994).

If the district court denies the outstanding Rule 59(e) motion, a COA and an amended notice of appeal are required to appeal the denial of that motion. *See Williams v. Thaler*, 602 F.3d 291, 304 (5th Cir. 2010), *overruled on other grounds by Banister v. Davis*, 590 U.S. 504, 521 (2020); Fed. R. App. P. 4(a)(4)(B)(ii).

The instant COA motion shall be HELD IN ABEYANCE until the notice of appeal becomes effective, and the clerk of this court is instructed to process the COA motion immediately upon the return of the case from the district court.



STEPHEN A. HIGGINSON
United States Circuit Judge

APPENDIX

C

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
F. EDWARD HEBERT BUILDING
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NEW ORLEANS, LOUISIANA 70130-3408

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Mr. Rolondo Stewart
#631620
Allen Correctional Center
3751 Lauderdale Woodyard Road
Kinder, LA 70648-0000

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NEW ORLEANS LA 700

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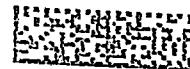
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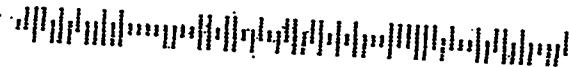
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Kinder, LA 70648

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24-30152

Mr. Rolondo Stewart
#631620
Allen Correctional Center
3751 Lauderdale Woodyard Road
Kinder, LA 70648-0000

United States Court of Appeals

**FIFTH CIRCUIT
OFFICE OF THE CLERK**

**LYLE W. CAYCE
CLERK**

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

December 10, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 24-30152 Stewart v. Cooley
 USDC No. 3:22-CV-711

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Christy Combel

By: Christy M. Combel, Deputy Clerk
504-310-7651

Mr. Donald David Candell
Mr. Michael L. McConnell
Mr. Rolondo Stewart

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 10, 2024

Lyle W. Cayce
Clerk

ROLONDO STEWART,

Petitioner—Appellant,

versus

KEITH COOLEY, *Warden, Allen Correctional Center,*

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Middle District of Louisiana
USDC No. 3:22-CV-711

ORDER:

Rolondo Stewart, Louisiana prisoner # 631620, seeks a certificate of appealability (COA) to challenge the dismissal of his 28 U.S.C. § 2254 application as untimely and the denial of his construed Federal Rule of Civil Procedure 59(e) motion.

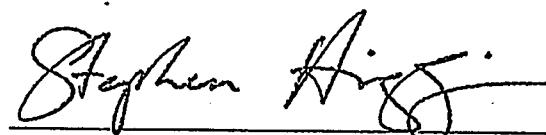
Stewart does not challenge the district court's determinations that his § 2254 application was untimely under 28 U.S.C. § 2244(d)(1)(A) and (d)(2) and that he failed to show his entitlement to statutory or equitable tolling. Accordingly, he has abandoned any argument challenging these determinations. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999);

Brinkmann v. Dallas Cnty. Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

In his COA pleadings, Stewart renews his substantive § 2254 claims, which he contends demonstrate actual innocence entitling him to habeas relief. Stewart further argues that his assertion of actual innocence—which is based on the absence of his DNA evidence at the crime scene and on a codefendant's inconsistent statements—excuses the untimeliness of his § 2254 application.

In order to obtain a COA, Stewart must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). When, as here, the district court denies relief on procedural grounds, a COA should issue if the prisoner establishes, at least, that jurists of reason would find it debatable whether the application states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Additionally, to obtain a COA to appeal the denial of a Rule 59(e) motion, a prisoner must show that jurists of reason could debate whether the district court abused its discretion in denying the motion. *Hernandez v. Thaler*, 630 F.3d 420, 428 (5th Cir. 2011). Stewart fails to meet these standards.

Accordingly, his motion for a COA is DENIED.



STEPHEN A. HIGGINSON
United States Circuit Judge