

**United States Court of Appeals
for the Fifth Circuit**

No. 24-10181

United States Court of Appeals
Fifth Circuit

FILED

October 21, 2024

JAMES BRADLEY HAMMOND,

Lyle W. Cayce
Clerk

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,
Correctional Institutions Division,*

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Northern District of Texas
USDC No. 4:23-CV-764

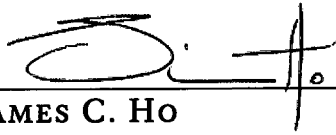
ORDER:

James Bradley Hammond, Texas prisoner # 02183719, was convicted of possession with intent to deliver between four and 200 grams of methamphetamine, and he received a sentence of 50 years in prison. He seeks a certificate of appealability (COA) to appeal the district court's dismissal as untimely of his 28 U.S.C. § 2254 application challenging this conviction. Hammond contends that pursuant to 28 U.S.C. § 2244(d)(1)(D), the one-year period should have begun on the date he received affidavits from two witnesses who provided information that he

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believes calls into question the State's case against him and the adequacy of counsel's investigation into his case. In addition, he asserts that the affidavits establish his actual innocence, which constitutes a gateway for consideration of the merits of his constitutional claims.

To obtain a COA, Hammond must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When, as here, the district court's denial of relief is based on procedural grounds, a COA may not issue unless the prisoner shows 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*, 529 U.S. at 484. Hammond fails to make the required showing as to the district court's limitations ruling. Accordingly, his motion for a COA is DENIED.



JAMES C. HO
United States Circuit Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JAMES BRADLEY HAMMOND,
INSTITUTIONAL ID No. 02183719,

Petitioner,

v.

No. 4:23-cv-0764-P

DIRECTOR, TDCJ-CID,

Respondent.

ORDER

In this 28 U.S.C. § 2254 habeas petition, James Bradley Hammond, a state prisoner proceeding pro se, challenges his 2018 Tarrant County conviction for possession with intent to deliver methamphetamine. *See* ECF No. 1. He claims that his conviction is unlawful on four grounds: (1) he is actually innocent of the crime; (2) there is insufficient evidence to support his conviction; (3) he received ineffective assistance of counsel at trial; and (4) the prosecutor suborned false testimony at trial. *Id.*

Respondent filed a thorough, well-written answer and relevant state-court records. *See* ECF Nos. 8, 9. Respondent argues that the Court should dismiss Hammond's petition because his actual-innocence claim is not cognizable under § 2254 and his remaining claims are barred by the applicable one-year statute of limitation period established by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *See* ECF Nos. 9; *see also* 28 U.S.C. § 2244(d)(1). Hammond filed a reply. *See* ECF No. 16.

The Court has carefully reviewed the parties' pleadings, the state-court records, and the governing law. Having done so, the Court finds that Hammond's reply has no merit and that, for the reasons stated in Respondent's answer, Hammond's petition should be dismissed with prejudice. Specifically, as noted by Respondent, the United States Court of Appeals for the Fifth Circuit has repeatedly held that claims of actual

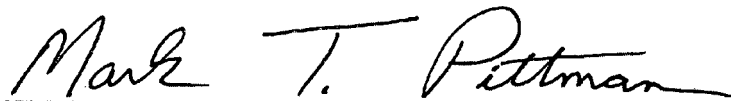
Appendix "B"

innocence are not cognizable on federal habeas review. *See Graves v. Cockrell*, 351 F.3d 143, 151 (5th Cir. 2003) (citations omitted). In addition, because Hammond filed this petition over two years after the applicable limitation period expired under § 2244(d)(1)(A)¹ and has failed to demonstrate that equitable tolling of the limitation period is warranted, the Court concludes that his remaining claims are time barred. Lastly, Hammond has not established that his actual-innocence claim should serve as a gateway to overcome his procedurally defaulted claims. *See Schulp v. Delo*, 513 U.S. 298, 316 (1995) (explaining the standard for surmounting procedural default through a showing of actual innocence).

The Court, therefore, **DISMISSES** Hammond's § 2254 habeas petition with prejudice.

For the same reasons, the Court concludes that Hammond has failed to show that reasonable jurists would question the Court's resolution of his claims. The Court, therefore, **DENIES** a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B); *see also* FED. R. APP. P. 22(b)(1).

SO ORDERED on this 23rd day of January 2024.



Mark T. Pittman
UNITED STATES DISTRICT JUDGE

¹For the reason stated by Respondent, the Court concludes that Hammond failed to demonstrate that the limitation period should begin to run from a later date under § 2244(d)(1)(B), (C), or (D).