Appendix A

FILED
United States Court of Appeals
Tenth Circuit

April 29, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ALONZO G. DAVISON,

Petitioner - Appellant,

v.

STEVEN HARPE,

Respondent - Appellee.

No. 24-5104
(D.C. No. 4:23-CV-00456-SEH-CDL)
(N.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **TYMKOVICH**, **MATHESON**, and **FEDERICO**, Circuit Judges.

Alonzo G. Davison, an Oklahoma state prisoner proceeding pro se,[1] seeks a certificate of appealability ("COA") to appeal the district court's denial of his 28 U.S.C. § 2241 habeas application. We deny his request for a COA and dismiss this matter.

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* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

[1] Because Mr. Davison appears pro se, "we liberally construe his filings, but we will not act as his advocate." *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

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I. BACKGROUND

Under Oklahoma law, people convicted of certain offenses committed on or after March 1, 2000, must serve 85 percent of their sentence to be eligible for parole. *See* Okla. Stat. tit. 21, § 12.1.

In 2002, an Oklahoma jury convicted Mr. Davison of lewd molestation (count one) and sexually abusing a minor child (count two). The trial court imposed a 50-year sentence on count one, and a consecutive 75-year sentence on count two. The court's judgment did not say when Mr. Davison committed the crimes. The Oklahoma Court of Criminal Appeals affirmed the convictions but modified the sentences to two concurrent 45-year terms.

In 2004, after the appeal, the trial court amended the judgment, changing the crime of conviction on count one from lewd molestation to sexually abusing a minor child, stating that crime occurred on August 8, 2001, and listing the sentence as 45 years. On count two, the amended judgment noted the crime occurred on January 1, 2000, and changed the sentence to a concurrent 45 years.

In 2023, Mr. Davison applied for § 2241 habeas relief in federal court. Section 2241 permits a state prisoner to challenge the execution of his sentence. *See Leatherwood v. Allbaugh*, 861 F.3d 1034, 1041 (10th Cir. 2017). Mr. Davison's § 2241 application asserted he had already completed his sentence and disputed how his "sentence is being carried out, calculated, or credited by prison or parole authorities." R. at 31. He alleged they had mistakenly applied the 85-percent rule to his count-one sentence. In his view, he was eligible for parole after serving one-third of the sentence.

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The district court denied his § 2241 application. The court found that although the 85-percent rule does not apply to Mr. Davison's sentence on count two, it does apply to his sentence for sexual abuse of a minor child committed on August 8, 2001. *See* Okla. Stat. tit. 21, § 13.1 (2001). It follows, the court said, that Mr. Davison will not be eligible for parole until 2040.

II. DISCUSSION

A state prisoner must obtain a COA to appeal the denial of § 2241 relief. *See* 28 U.S.C. § 2253(c)(1)(A); *Montez v. McKinna*, 208 F.3d 862, 867 (10th Cir. 2000). To receive a COA, the prisoner must make "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and must show "that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted). We deny Mr. Davison's request for a COA because reasonable jurists could not debate that he has failed to state a claim for relief under § 2241.

Mr. Davison does not dispute that if the amended judgment accurately identified when he committed the crime, the 85-percent rule governs. He admits that prison officials applied the 85-percent rule to his count-one sentence because the amended judgment says he committed the crime on August 8, 2001. His § 2241 application fails to show any error in the execution of his sentence.[2]

[2] Mr. Davison argues the district court should have held a hearing. A district court has discretion to hold a habeas-case evidentiary hearing, which is unnecessary where, as

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In this court, Mr. Davison does not contend prison officials erred in executing his sentence. *See* Appl. for COA at 18. He instead argues the Oklahoma trial court erred by including the date of the count-one offense in the amended judgment. But this attack does not challenge the execution of the sentence and must be made in a § 2254 application.[3] *See Leatherwood*, 861 F.3d at 1042; *see also Magwood v. Patterson*, 561 U.S. 320, 332 (2010) (recognizing a § 2254 application "seeks *invalidation* (in whole or in part) *of the judgment* authorizing the prisoner's confinement" (quotations omitted)).

Mr. Davison's § 2241 application identifies only a single ground for relief—improper application of the 85-percent rule. Reasonable jurists would not debate the district court's rejection of that claim.

III. CONCLUSION

We deny Mr. Davison's application for a COA and dismiss this matter.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge

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here, the court can resolve a habeas application based on the record. *See Anderson v. Att'y Gen. of Kan.*, 425 F.3d 853, 858-59 (10th Cir. 2005). Because the amended judgment refutes Mr. Davison's § 2241 claim, no reasonable jurist could debate that the district court acted within its discretion in not holding a hearing.

[3] Mr. Davison has already challenged his Oklahoma judgment in a § 2254 habeas application. *See Davison v. McCollum*, 696 F. App'x 859, 860 (10th Cir. 2017). He may not file a second or successive § 2254 application challenging the judgment without prior authorization from this court. *See* 28 U.S.C. § 2244(b)(3)(A).

Appendix B

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

ALONZO G. DAVISON,	
Petitioner,	
v.	**Case No. 23-CV-0456-SEH-CDL**
STEVEN HARPE,	
Respondent.	

ORDER

This matter is before the Court on Petitioner Alonzo G. Davison's Amended Petition for Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2241 ("Petition") [ECF No. 4]. Davison, a self-represented Oklahoma prisoner, claims the Oklahoma Department of Corrections ("ODOC") is unlawfully detaining him because he has fully discharged the sentences imposed against him. Respondent moves to dismiss the Petition, asserting that Davison's continued state custody is lawful because he has not discharged his sentences. Having carefully considered the Petition, Respondent's Motion to Dismiss [ECF No. 15], Davison's Response [ECF No. 19], materials submitted by both parties, and applicable law, the Court concludes that Davison has not shown that he is in custody in violation of federal law. The Court therefore GRANTS Respondent's Motion and DENIES the Petition.

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reduce the length of his sentence (the "85 percent rule"). The 85 percent rule, effective July 1, 1999, provides that:

> A person committing a felony offense listed in [Okla. Stat. tit. 21, § 13.1] on or after March 1, 2000, and convicted of the offense shall serve not less than eighty-five percent (85%) of the sentence of imprisonment imposed within the Department of Corrections. Such person shall not be eligible for parole consideration prior to serving eighty-five percent (85%) of the sentence imposed and such person shall not be eligible for earned credits or any other type of credits which have the effect of reducing the length of the sentence to less than eighty-five percent (85%) of the sentence imposed.

Okla. Stat. tit. 21, § 12.1 (Supp. 1999). Effective November 1, 2000, the list of felony offenses covered by the 85 percent rule included both "child abuse as defined in Section 7115 of Title 10 of the Oklahoma Statutes" and "lewd molestation of a child as defined in Section 1123 of the Oklahoma Statutes." Okla. Stat. tit. 21, § 13.1 (Supp. 1999); *see* ECF No. 15-3. Before Oklahoma adopted the 85 percent rule, Oklahoma law provided that, for crimes committed on or after July 1, 1998, "any person in the custody of the Department of Corrections shall be eligible for consideration for parole who has completed serving one-third (1/3) of the sentence." ECF No. 19, at 8-9 (quoting) Okla. Stat. tit. 57, § 332.7 (1999)).

The trial court did not mention the 85 percent rule at Davison's sentencing hearing. ECF No. 19-1, at 2-4. Consistent with its oral pronouncement of the sentences, the trial court filed judgments and sentences in November 2002,

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offense he committed on August 1, 2001, and sentenced to forty-five years' imprisonment (count one); that Davison was convicted of sexually abusing a minor child, in violation of Okla. Stat. tit. 10, § 7115, for an offense he committed on January 1, 2000, and sentenced to forty-five years' imprisonment (count two); and that Davison was ordered to serve these sentences concurrently. *Id.* at 13-14; ECF No. 15-2.[1]

The ODOC is responsible for calculating and applying earned credits for inmates who are eligible to receive them at any point during their term of incarceration. *See* Okla. Stat. tit. 57 O.S. § 138; ECF No. 15-4 (ODOC policy OP-060211, Sentence Administration). Davison's Consolidated Record Card ("CRC"), maintained by the ODOC, shows that the OCCA modified his original sentences to forty-five-year terms, to be served concurrently. ECF No. 15-1, at 1. The CRC further indicates (1) that the 85 percent rule applies to the sentence in count one; (2) that the 85 percent rule does not apply to the sentence in count two; and (3) that the ODOC has calculated June 28, 2040,

[1] As previously stated, the OCCA affirmed Davison's convictions and modified his sentences. ECF No. 19-1, at 11. Nothing in the record explains why the amended judgment and sentence for count one changed the offense from lewd molestation to sexual abuse of a child. Regardless of the reason for this anomaly, as of November 1, 2000, both offenses were included in the list of felony offenses covered by the 85 percent rule. ECF No. 15-3.

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execution, rather than the validity, of his sentence. *Leatherwood v. Allbaugh*, 861 F.3d 1034, 1041-42 (10th Cir. 2017); *Montez v. McKinna*, 208 F.3d 862, 865 (10th Cir. 2000).

As previously stated, Davison claims his continued imprisonment violates his constitutional right to due process because, by his calculation, he discharged his sentences in July 2022. ECF No. 4, at 10-11. Davison asserts that he "is serving two 45-year concurrent sentences where he was required by Oklahoma law to serve one-third of said sentences before being eligible for parole consideration and earned credits." *Id.* at 6; *see also* ECF No. 19, at 9. Davison appears to argue (1) that the 85 percent rule does not apply to his sentences because the trial court did not mention the 85 percent rule when the trial court orally pronounced Davison's sentence, *see* ECF No. 19, at 13-20, 22; and (2) because the amended judgments and sentences "conflict with the oral pronouncement of [his] sentence in count one" and contain several inaccuracies, *see* ECF No. 19, at 21-25. As the Court understands it,

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For three reasons, the Court finds and concludes that Davison has not shown that his continued custody violates his right to due process. First, Davison is mistaken to the extent he argues that the ODOC is required to administer his sentences as they were "orally pronounced" at his sentencing hearing. ECF No. 19, at 15-20. This argument wholly ignores that Davison obtained more favorable sentences on direct appeal when the OCCA modified each of his sentences to forty-five-year terms and ordered him to serve them concurrently. The ODOC is tasked with administering the modified sentences reflected in the September 2004 amended judgments and sentences. Regardless of any alleged inaccuracies Davison has identified in those documents, the amended judgments and sentences accurately state the sentencing modifications that were mandated by the OCCA.

Second, Davison has not shown that the ODOC is improperly administering his count one sentence by applying the 85 percent rule. That rule states that inmates serving sentences for specified crimes are not eligible for parole or eligible to receive earned credits until after they have completed 85 percent of their sentence. Okla. Stat. tit. 21, § 12.1 (Supp. 1999). And, as previously noted, the amended judgment and sentence as to count one shows that Davison was convicted and sentenced for an offense that is subject to the 85 percent rule. ECF No. 15-2, at 1; *see also* ECF No. 15-3 (citing relevant

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II.D.1.c, that "inmates serving a sentence for any of the crimes listed below committed on or after March 1, 2000, are eligible to earn credits during the first 85% percent of the sentence; however, said credits will not be applied towards the sentence until the inmate has served 85% of said sentence").

III. Conclusion

Because Davison has not shown that he is in custody in violation of the Constitution or other federal law, this Court has no authority to order Respondent to release him from prison. 28 U.S.C. § 2241(c)(3). The Court thus concludes that Respondent's Motion to Dismiss shall be GRANTED, and that Davison's Petition shall be DENIED. The Court further concludes that no certificate of appealability shall issue as to any matters raised in the Petition. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); 28 U.S.C. § 2253(c).

IT IS ORDERED that (1) the Motion to Dismiss [ECF No. 15] is GRANTED; (2) the Petition [ECF No. 4] is DENIED; (3) a certificate of appealability is DENIED; and (4) a separate judgment shall be entered in this matter.

IT IS SO ORDERED this 21st day of August, 2024.

Sara Hill

Sara E. Hill
UNITED STATES DISTRICT JUDGE

Appendix C

UNITED STATES COURT OF APPE

FOR THE TENTH CIRCUIT

FILED
United States Court of Appeal
Tenth Circuit

June 9, 2025

Christopher M. Wolpert
Clerk of Court

ALONZO G. DAVISON,

Petitioner - Appellant,

v.

STEVEN HARPE,

Respondent - Appellee.

No. 24-5104
(D.C. No. 4:23-CV-00456-SEH-CDL)
(N.D. Okla.)

ORDER

Before **TYMKOVICH**, **MATHESON**, and **FEDERICO**, Circuit Judges.

On April 29, 2025, we denied Alonzo Davison's application for a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2241 habeas application. Our ruling stemmed in part from the basic principle that a state prisoner may challenge his sentence's execution under 28 U.S.C. § 2241 but may challenge the judgment causing his confinement only under 28 U.S.C. § 2254. *See Leatherwood v. Allbaugh*, 861 F.3d 1034, 1041-42 (10th Cir. 2017); *see also Magwood v. Patterson*, 561 U.S. 320, 332 (2010) (recognizing a § 2254 application "seeks *invalidation* (in whole or in part) *of the judgment* authorizing the prisoner's confinement" (quotations omitted)).

In his COA application, Mr. Davison argued the state trial court erred by including certain information in his amended judgment, an argument that should be raised under § 2254 because it challenged the amended judgment itself rather than the execution of his

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sentence. We denied a COA because Mr. Davison failed to adequately address the district court's reasons for denying his § 2241 application, let alone show that reasonable jurists could debate that denial. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted).

Mr. Davison has filed a petition for rehearing and rehearing en banc. He contends our COA denial conflicts with an earlier order from this court that denied his motion for authorization to file a second § 2254 application. In that order, we said his motion was "unnecessary" because "Mr. Davison's claim that he has completed his sentence falls under § 2241," not § 2254. *In re Davison*, No. 23-5106, Order at 1 (10th Cir. Oct. 5, 2023). There is no conflict.

Mr. Davison's motion in No. 23-5106 effectively sought authorization to challenge the execution of his sentence. Similarly, his § 2241 application in district court underlying his COA request here challenged how his "sentence is being carried out, calculated, or credited by prison or parole authorities." R. at 31. But Mr. Davison switched course in his COA application to us. Rather than contest how prison officials have executed his sentence, he shifted his focus to the state trial court, arguing it erred by including certain information in the amended judgment, a § 2254 argument.[1] *See, e.g.*, COA Appl. at 18 (disclaiming any argument that prison officials are

[1] Mr. Davison's additional contention that the amended judgment conflicts with the trial court's oral pronouncement of his sentence also attacks the amended judgment rather than the execution of the sentence.

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"improperly administering" his sentence); *id.* at 23-24 (attributing his confinement to information "inserted on the Amended Judgment and Sentences").

In sum, because Mr. Davison's COA application redirected his challenge about the sentence's execution to argue error in his amended judgment, it failed to show that reasonable jurists could debate whether his § 2241 application "should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack*, 529 U.S. at 484 (quotations omitted).[2]

* * *

We deny Mr. Davison's petition for panel rehearing. His petition for rehearing en banc was transmitted to all judges of the court who are in regular active service. No member of the panel and no judge in regular active service requested that the court be polled, so the petition for rehearing en banc is also denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

[2] Mr. Davison has not otherwise shown in his COA request or his petition that the district court's order denying relief is subject to reasonable debate.

Additional material from this filing is available in the Clerk's Office.