

A P P E N D I X

-RULING ON STATE HABEAS WRIT-

-RULING ON FEDERAL HABEAS WRIT-

-RULING OF UNITED STATES COURT OF APPEALS  
ON PERMISSION FOR LEAVE TO FILE SUCCESSIVE WRIT-

FROM COURT OF CRIMINAL APPEALS OF TEXAS  
8 CAPITOL STATION, AUSTIN, TEXAS 78701  
TEXAS  
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FIRST CLASS  
COURT OF CHINA  
JUL 18 2022

78701 000.348  
672130 JUL 18 2022

Tr. Ct. No. 34, B WR-79,112-02

but written order this subsequent application for a writ  
CRIM. PROC. Art. 11.07, Sec. 4(a)-(c).

**MCCLUER, ROGER LARRY**

Tr. Ct. No. 34, 1918

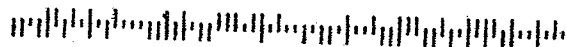
**WR-79,112-02**

The Court has dismissed without written order this subsequent application for a writ of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c).

Deana Williamson, Clerk

ROGER LARRY MCCLUER  
DARRINGTON UNIT - TDC #1539918  
59 DARRINGTON ROAD  
ROSHARON, TX 77583

28 FMEZTAB 77583



FROM COURT OF CRIMINAL APPEALS OF TEXAS  
8, CAPITOL STATION, AUSTIN, TEXAS 78711  
TEXAS  
FOR  
USE

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U.S. POSTAGE  
Z 7501 000.348  
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0009579 JUL 20 2022

Tr. Ct. No. 34,787B  
WR-79,112-02  
"APPLICANT'S MOTION FOR LEAVE TO HOLD  
NON-COMPLIANCE".

MCCLUER, ROGER LARRY

Tr. Ct. No. 34,787B

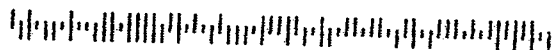
**WR-79,112-02**

On this day, this Court has denied "APPLICANT'S MOTION FOR LEAVE TO HOLD WRIT IN ABEYANCE DUE TO NON-COMPLIANCE".

Deana Williamson, Clerk

ROGER LARRY MCCLUER  
DARRINGTON UNIT - TDC #1539918  
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ROSHARON, TX 77583

FMFENAB 77583



**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS**

**WACO DIVISION**

**ROGER LARRY MCCLUER,  
TDCJ # 1539918,  
Petitioner,**

**v.**

**WILLIAM STEPHENS,  
Director, Texas Department  
of Criminal Justice,  
Correctional Institutions Division,  
Respondent.**

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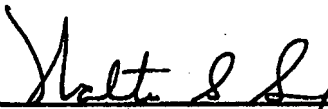
**Civil No. W-13-CA-196**

**ORDER**

Before the Court is Petitioner's Motion to Proceed *In Forma Pauperis* ("IFP") on appeal. (Doc. 12). By Order entered on August 9, 2013, the Court denied Petitioner's 28 U.S.C. § 2254 application as time barred and refused to issue a certificate of appealability. (Doc. 9). Pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3), and based upon the findings and conclusions contained in the August 9 Order, the Court certifies that this appeal is frivolous and, therefore, not taken in good faith. Accordingly, it is

**ORDERED** that Petitioner's Motion to Proceed IFP on appeal (Doc. 12) is **DENIED**.

SIGNED this 1<sup>st</sup> day of <sup>October</sup>~~September~~, 2013.

  
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WALTER S. SMITH, JR.  
UNITED STATES DISTRICT JUDGE

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

July 28, 2023

Lyle W. Cayce  
Clerk

No. 23-50519

IN RE ROGER LARRY McCLUER,

*Movant.*

Motion for an Order Authorizing  
the United States District Court  
for the Western District of Texas  
to Consider a Successive 28 U.S.C. § 2254 Application

UNPUBLISHED ORDER.

Before SMITH, SOUTHWICK, and WILSON, *Circuit Judges.*

PER CURIAM:

Roger Larry McCluer, Texas prisoner # 1539918, moves for authorization to file a successive 28 U.S.C. § 2254 application challenging his conviction of capital murder. A prisoner seeking to file a successive habeas application must apply for leave from this court. 28 U.S.C. § 2244(b)(3)(A). This court may authorize the filing of a successive § 2254 application if the applicant makes a *prima facie* showing that (1) his claim relies on a new rule of constitutional law that was made retroactive to cases on collateral review by the Supreme Court and was previously unavailable or (2) the factual predicate for the claim could not have been discovered through due diligence, and the underlying facts, if proven, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact-

No. 23-50519

finder would have found the applicant guilty of the underlying offense.  
§ 2244(b)(2), (3)(C).

McCluer seeks to raise a claim that counsel rendered ineffective assistance in connection with the plea-bargain process by improperly advising McCluer to reject the state's offer of a plea bargain and instead proceed to trial. McCluer maintains that his claim is based on a new rule of constitutional law established in *Missouri v. Frye*, 566 U.S. 134 (2012), and *Lafler v. Cooper*, 566 U.S. 156 (2012). But *Frye* and *Cooper* "did not announce new rules of constitutional law because they merely applied the Sixth Amendment right to counsel to a specific factual context." *In re King*, 697 F.3d 1189, 1189 (5th Cir. 2012). Accordingly, McCluer has not made a *prima facie* showing that his ineffective-assistance claim meets the requirements of § 2244(b)(2)(A).

IT IS ORDERED that the motion for authorization to file a successive § 2254 application is DENIED.

U.S. v Rich - 141 F.3d 550 - 3\* 1998 - outdated, No good! <sup>AUG 12, 2012</sup>  
King Filed Aug, 2012 after Cooper - Pro-Se - successive writ  
Perez - Stat/Gr Strickland over Cooper and Cooper is not a  
Constitutional claim.