

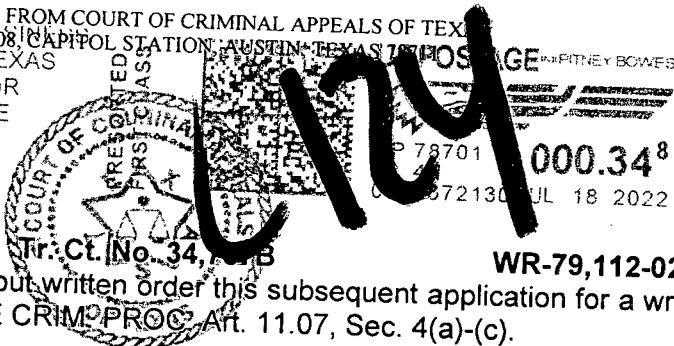
A P P E N D I X

-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-

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711-2308
STATE OF TEXAS
PENALTY FOR
PRIVATE USE



7/13/2022

MCCLUER, ROGER LARRY

Tr. Ct. No. 34, 787B

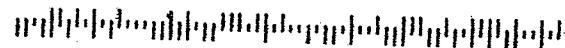
WR-79,112-02

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).

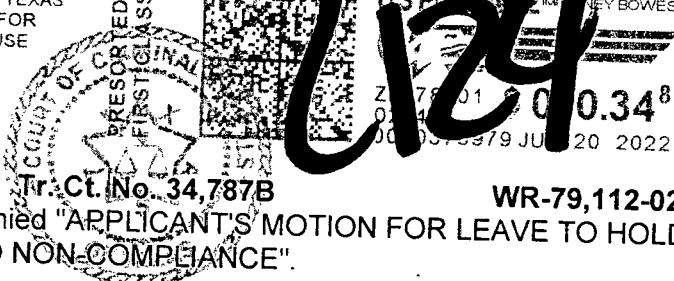
Deana Williamson, Clerk

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

28 FMEZNAB 77583



OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711-2308
STATE OF TEXAS
PENALTY FOR
PRIVATE USE



7/13/2022

MCCLUER, ROGER LARRY

Tr. Ct. No. 34, 787B

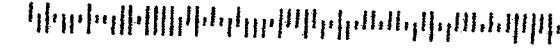
WR-79,112-02

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
59 DARRINGTON ROAD
ROSHARON, TX 77583

28 FMFENAB 77583



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

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

v.

Civil No. W-13-CA-196

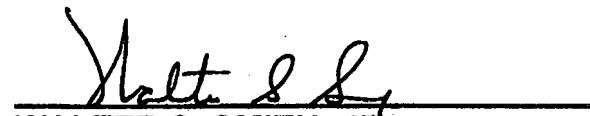
**WILLIAM STEPHENS,
Director, Texas Department
of Criminal Justice,
Correctional Institutions Division,
Respondent.**

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 18 day of ^{October} September, 2013.


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 - 5th 1998 - outdated, No good!
King filed Aug, 2012 after Cooper - Pro Se - successive writ
Ferez - Strickland over Cooper and Cooper is not a
constitutional claim.