

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

No. 21-50880

United States Court of Appeals
Fifth Circuit

FILED

March 4, 2022

Lyle W. Cayce
Clerk

STEVEN MICHAEL BACKSTROM,

Petitioner—Appellant,

versus

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

Respondent—Appellee.

Application for Certificate of Appealability from the
United States District Court for the Western District of Texas
USDC No. 1:13-CV-37

ORDER:

Steven Michael Backstrom, Texas prisoner # 1657938, was convicted of burglary of a habitation with intent to commit indecency with a child and aggravated sexual assault of a child. Backstrom moves for a certificate of appealability (COA) to appeal the dismissal of his Federal Rule of Civil Procedure 60(b) motion as an unauthorized successive § 2254 application challenging these convictions. *See Gonzalez v. Crosby*, 545 U.S. 524, 530-32 & n.4 (2005).

No. 21-50880

He fails to show that jurists of reason could debate the district court's determination that his second Rule 60(b) motion was an unauthorized successive § 2254 application. *See Slack v. Davis*, 529 U.S. 473, 484 (2000).

Backstrom's motions for leave to supplement his COA brief and file an admission of error are GRANTED. His motion for a COA is DENIED.

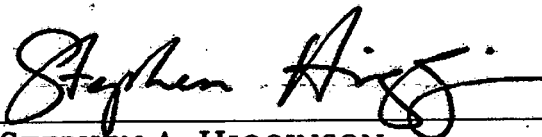

STEPHEN A. HIGGINSON
United States Circuit Judge

EXHIBIT 36



United States Court of Appeals for the Fifth Circuit

A True Copy
Certified order issued Jan 06, 2023

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 22-51056

United States Court of Appeals
Fifth Circuit

FILED
January 6, 2023

Lyle W. Cayce
Clerk
Movant.

IN RE STEVEN MICHAEL BACKSTROM,

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UNPUBLISHED ORDER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 HAYNES, ENGELHARDT, and OLDHAM, *Circuit Judges.*

PER CURIAM:

Steven Michael Backstrom, Texas prisoner # 1657938, seeks authorization to file a successive 28 U.S.C. § 2254 application challenging his conviction of burglary of a habitation with intent to commit indecency with a child and aggravated sexual assault of a child. This court may authorize the filing of a successive § 2254 application with respect to a claim that was not presented in a prior application if the applicant makes a prima facie showing that (1) “the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable” or (2) “the factual predicate for the claim could not have been discovered previously through the exercise of due diligence” and “the facts

No. 22-51056

underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.” 28 U.S.C. § 2244(b)(2); *see* § 2244(b)(1), (b)(3)(C).

Backstrom intends to argue that his trial counsel submitted a false affidavit during his state habeas proceedings in response to his claims of ineffective assistance of counsel, thereby committing fraud on the state habeas court. He maintains that the alleged fraud on the state habeas court affected his due process rights. Infirmities in state postconviction proceedings are not grounds for relief under § 2254. *See Moore v. Dretke*, 369 F.3d 844, 846 (5th Cir. 2004). Thus, this proposed challenge does not state a claim that is cognizable on federal habeas review. *See In re Gentras*, 666 F.3d 910, 911 (5th Cir. 2012).

To the extent that Backstrom attempts to present a claim of actual innocence, this court “does not recognize freestanding claims of actual innocence on federal habeas review.” *In re Swearingen*, 556 F.3d 344, 348 (5th Cir. 2009). Likewise, he may not rely on an assertion of actual innocence to serve as a gateway to overcome the bar to successive filing. *See Jackson v. Lumpkin*, 25 F.4th 339, 341-42 (5th Cir. 2022).

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