

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 20, 2025

Lyle W. Cayce
Clerk

No. 25-50283

Attachment # 2
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IN RE MICKEY RAY TAYLOR, JR.,

Petitioner.

Petition for Writ of Mandamus to the
United States District Court
for the Western District of Texas
USDC No. 7:24-CV-71

UNPUBLISHED ORDER

Before JONES, RICHMAN, and RAMIREZ, *Circuit Judges.*

PER CURIAM:

Mickey Ray Taylor, Jr., Texas prisoner # 02367588, has filed in this court a pro se petition for a writ of mandamus and a motion requesting leave to file his mandamus petition in forma pauperis (IFP). The motion for leave to proceed IFP is GRANTED.

“Mandamus is an extraordinary remedy that should be granted only in the clearest and most compelling cases.” *In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987). A party seeking mandamus relief must show both that he has no other adequate means to obtain the requested relief and that he has a “clear and indisputable” right to the writ. *Id.* (internal quotation marks and citation omitted).

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In 2021, a jury in Texas convicted Taylor on two counts of aggravated assault with a deadly weapon, for which he received an aggregate sentence of 15 years in prison. *Taylor v. State*, No. 11-21-00233-CR, 2022 WL 17346052, 1 (Tex. App. Dec. 1, 2022) (unpublished). In an unrelated case, he pleaded nolo contendere to one count of evading arrest or detention with a motor vehicle, and the trial court found him guilty and sentenced him to five years in prison. *Taylor v. State*, No. 11-21-00256-CR, 2022 WL 17346072, 1 (Tex. App. Dec. 1, 2022) (unpublished). Taylor now seeks mandamus relief relating to his 28 U.S.C. § 2254 applications challenging these convictions as well as his 42 U.S.C. § 1983 complaints concerning the criminal proceedings.

With respect to the habeas applications, Taylor asserts in his original mandamus petition that he filed Cause Numbers 7:24-CV-59 and 7:24-CV-71 in the district court, the respondent filed answers in August 2024, but the district court failed to rule. He seeks an order compelling the district court to adjudicate both habeas proceedings. Mandamus is a possible remedy when the district court has unduly delayed in ruling on a case. *See Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661-62 (1978). In a supplemental memorandum, however, Taylor asserts that the district court entered “clearly erroneous” denials and dismissals in both cases despite his clear entitlement to habeas relief. The dockets reflect that the district court entered final judgment in April 2025, in Cause Number 7:24-CV-59 and May 2025, in Cause Number 7:24-CV-71, rendering moot the request to compel the district court to rule on Taylor’s habeas applications.

Taylor now seeks an order to the district court to issue a “proper” adjudication of his habeas proceedings and to reverse the adverse decisions. “Where an interest can be vindicated through direct appeal after a final judgment, this court will ordinarily not grant a writ of mandamus.” *Campanioni v. Barr*, 962 F.2d 461, 464 (5th Cir. 1992). Taylor acknowledges

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that he has applied for a certificate of appealability in both cases and that the applications are pending in this court.

As for the civil rights actions, Taylor claims that he filed Cause Number 7:20-CV-124, in which he alleged that the officers involved in his 2019 arrest used excessive force and retaliated against him; he also raised claims related to the conditions of his confinement at the county detention center. In 2022, the district court granted summary judgment against the remaining defendants and entered final judgment. This court denied IFP and dismissed Taylor's appeal as frivolous. *Taylor v. Winn*, No. 22-50994, 2023 WL 3004144, 1 (5th Cir. Apr. 19, 2023) (unpublished). In 2022, Taylor filed Cause Number 7:22-CV-86, alleging that various law enforcement officers and entities had retaliated against him for filing the prior civil action. In 2023, the district court granted summary judgment in favor of the defendants and entered final judgment. Taylor concedes that he did not appeal this ruling.

Taylor seeks an order compelling the district court to reopen both civil rights cases, appoint him counsel from outside Midland County to represent him, and provide him with funds to relocate after his allegedly imminent release from prison so that he can protect himself and his family from retaliation by law enforcement. He maintains that he has demanded settlements from various defendants in the civil rights cases. Our mandamus authority does not extend to directing a district court to reconsider a ruling in a closed case. *Cf. Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 25 (1943) (limiting mandamus authority to issuance of writs "in aid of a jurisdiction already acquired by appeal" or "to those cases that are within [our] appellate jurisdiction although no appeal has been perfected").

Finally, Taylor has moved to recuse the district court judge from the § 2254 and § 1983 proceedings or to transfer venue to a different court, based

on personal bias. A party may seek review of a disqualification ruling by way of a mandamus petition. *In re Chevron U.S.A., Inc.*, 121 F.3d 163, 165 (5th Cir. 1997); *In re Corrugated Container*, 614 F.2d 958, 961 n.4 (5th Cir. 1980). However, Taylor did not move to recuse the district court judge in any of his cases.

Otherwise, Taylor has demonstrated no “clear and indisputable right” to a writ of mandamus compelling recusal or the reassignment of his lawsuits to a different district court judge. *In re Willy*, 831 F.2d at 849 (internal quotation marks and citation omitted). Recusal of judges for bias is governed by 28 U.S.C. § 144 and 28 U.S.C. § 455. *United States v. Scroggins*, 485 F.3d 824, 829 & n.19 (5th Cir. 2007). Under either statute, bias warranting disqualification must be personal, rather than judicial. *Id.* at 830. Adverse rulings on motions ordinarily do not warrant disqualification for bias; they must “reveal an opinion based on an extrajudicial source” or “demonstrate such a high degree of antagonism as to make fair judgment impossible.” *Id.* Taylor cites the district court’s adverse rulings in his now-closed habeas and civil rights cases in support of his assertion that the court is biased against him. He also maintains that the district court’s denial of a certificate of appealability on procedural grounds only with respect to some of his claims, without consideration of the merits of the allegations, will bar him from obtaining relief, citing *United States v. Castro*, 30 F.4th 240, 243-45 (5th Cir. 2022). These allegations are insufficient to show personal bias based on an extrajudicial source. *See Scroggins*, 485 F.3d at 830.

The petition for a writ of mandamus is DENIED.

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F.3d 833, 836 (5th Cir. 2003). A petition is successive if it raises a claim that was or could have been raised in an earlier petition or otherwise constitutes an abuse of the writ. *Hardemon v. Quarterman*, 516 F.3d 272, 275 (5th Cir. 2008); *Crone*, 324 F.3d at 836–37. If it essentially represents a second attack on the same conviction raised in the earlier petition, a petition is successive. *Hardemon*, 516 F.3d at 275–76 (distinguishing *Crone* because “*Crone* involved multiple §2254 petitions attacking a single judgment”).

Insofar as the Fifth Circuit has not granted leave to file a successive habeas petition, this Court is without jurisdiction to consider Petitioner’s new allegations. *See* 28 U.S.C. §2244(b)(2). When a petition is second or successive, the petitioner must seek an order from the Fifth Circuit that authorizes this Court to consider the petition. *See* 28 U.S.C. §2244(b)(3)(A). The Fifth Circuit “may authorize the filing of a second or successive application only if it determines that the application makes a *prima facie* showing that the application satisfies the requirements of [§2244(b)].” *Id.* §2244(b)(3)(C).

To present a claim in a second or successive application that was not presented in a prior application, the application must show that it is based on: (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found him guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable. *Id.* §2244(b)(2).

Before Petitioner files his application in this Court, a three-judge panel of the Fifth Circuit must determine whether the application makes the requisite *prima facie* showing. *See id.* §2244(b)(3)(A) and (B). As Petitioner’s newly discovered evidence does not undermine the integrity of his trial or establish by clear and convincing evidence that no reasonable fact finder

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would have found him guilty, this Court lacks jurisdiction over this action and it should therefore be dismissed.

Unless the Fifth Circuit first grants Movant leave to file the present §2254 motion, this Court lacks jurisdiction to consider the same. *See Hooker v. Sivley*, 187 F.3d 680, 682 (5th Cir. 1999); *United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000). Therefore, this Motion, construed as a new §2254, should be dismissed for want of jurisdiction. The Fifth Circuit has not issued an order authorizing this Court to consider the successive petition in this case. Petitioner must obtain such an order before he can file a successive application challenging his conviction. Because this is Petitioner's second §2254, dismissal *without* prejudice for want of jurisdiction—as opposed to transfer—is appropriate. *See In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997) (per curiam) (addressing transferred application); *Crone*, 324 F.3d at 838 (remanding successive application with instructions to dismiss).

III. Certificate of appealability

Because the habeas corpus petition filed here is governed by the AEDPA, codified as amended at 28 U.S.C. §2253, a certificate of appealability (COA) is required before an appeal may proceed. *See Hallmark v. Johnson*, 118 F.3d 1073, 1076 (5th Cir. 1997) (noting that actions filed under either 28 U.S.C. §2254 or §2255 require a COA). “This is a jurisdictional prerequisite because the COA statute mandates that ‘[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals’” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (citing 28 U.S.C. §2253(c)(1)).

Petitioner has not yet asked for a certificate to appeal the adjudication of this Motion, though this Court may consider the issue on its own. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000). A court may only issue a certificate of appealability when “[a petitioner] has

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made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §2253(c)(2); *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Petitioner failed to make “a substantial showing of the denial of a federal right” and cannot make a substantial showing that this Court’s procedural rulings are incorrect as required by Fed. R. App. P. 22 for a COA. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Thus, this Court **DENIES** Petitioner a COA. *See* Rule 11(a) of the Rules Governing §2254 Proceedings.

IV. Conclusion

Therefore, as the Court has construed this Motion as a new §2254, the Clerk of the Court is **ORDERED** to open a new §2254 case for this Motion [docket number 61] and then close such based on this Order. Movant’s successive §2254 is **DISMISSED WITHOUT PREJUDICE** for want of jurisdiction. This allows Petitioner to seek authorization from the Fifth Circuit to be permitted to file in this Court for relief, if he so desires. Additionally, **A CERTIFICATE OF APPEALABILITY WILL NOT ISSUE** here. This case is now closed.

It is so **ORDERED**.

SIGNED this 16th day of October, 2025.



DAVID COUNTS
UNITED STATES DISTRICT JUDGE