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UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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No. 26-1355

---

Parnell R. May

Plaintiff - Appellant

v.

Dexter Payne, Director, Arkansas Division of Correction

Defendant - Appellee

---

Appeal from U.S. District Court for the Eastern District of Arkansas - Central  
(4:23-cv-00350-JM)

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JUDGMENT

Before GRUENDER, GRASZ, and KOBES, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied.

The motion to proceed on appeal in forma pauperis is denied as moot.

The appeal is dismissed.

May 13, 2026

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

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Appendix A  
Page 2 of 2

Message-Id:<10033208@ared.uscourts.gov> Subject:Activity in Case 4:23-cv-00350-JM May v. Payne Order on Motion for Relief Content-Type: text/html  
This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is  
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U.S. District Court

Eastern District of Arkansas

**Notice of Electronic Filing**

The following transaction was entered on 2/3/2026 at 10:22 AM CST and filed on 2/3/2026

Case Name: May v. Payne

Case Number: 4:23-cv-00350-JM

Filer:

**WARNING: CASE CLOSED on 01/07/2025**

Document Number: 105 (No document attached)

**Docket Text:**

(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER denying [102] Motion for Relief. This  
case is closed. Signed by Judge James M. Moody Jr. on 2/3/2026. (sjh)

4:23-cv-00350-JM Notice has been electronically mailed to:

Kent G. Holt Kent.Holt@arkansasag.gov, christa.warner@arkansasag.gov, ericha.clark@arkansasag.gov, theresa.griffin@arkansasag.gov

4:23-cv-00350-JM Notice has been delivered by other means to:

Parnell R May  
ADC #153557  
EAST ARKANSAS REGIONAL UNIT  
Arkansas Division of Correction  
Post Office Box 970  
Marianna, AR 72360

Appendix B  
Page 1 of 3

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

PARNELL R MAY  
ADC #153557

PETITIONER

V.

CASE NO. 4:23-cv-00350-JM

DEXTER PAYNE

RESPONDENT

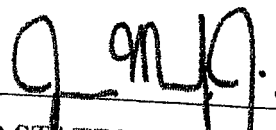
ORDER

The Court has received proposed findings and recommendations from United States Magistrate Judge Jerome T. Kearney. After careful review of the findings and recommendations and the timely objections thereto, as well as a de novo review of the record, the Court concludes that the findings and recommendations should be, and are hereby, approved and adopted as this Court's findings in their entirety.

The Court will not issue a certificate of appealability because Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(1)-(2). Because the Court will not issue a certificate of appealability, it certifies that an appeal in forma pauperis would not be taken in good faith. Fed. R. App. P. 24(a)(3)(A). Petitioner's motion for certificate of appealability (ECF No. 46) is DENIED.

Petitioner's motion for extension of time to file objections (ECF No. 40) is MOOT and his motion for reconsideration, motions to renew, and motion for hearing (ECF Nos. 42, 43, 44, 45) are DENIED. The petition for writ of habeas corpus (ECF No. 2) is DISMISSED with prejudice.

IT IS SO ORDERED this 7th day of January, 2025.

  
UNITED STATES DISTRICT JUDGE

Appendix B

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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

PARNELL R MAY  
ADC #153557

PETITIONER

V.

CASE NO. 4:23-cv-00350-JM

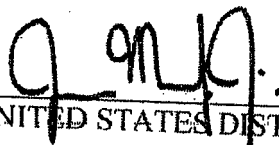
DEXTER PAYNE

RESPONDENT

JUDGMENT

Pursuant to the Order entered on this day, IT IS CONSIDERED, ORDERED and ADJUDGED that the petition for writ of habeas corpus is DISMISSED with prejudice. All habeas relief is denied, and this case is closed.

IT IS SO ORDERED this 7th day of January, 2025.

  
UNITED STATES DISTRICT JUDGE

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Page 3 of 3

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

PARNELL R. MAY

PETITIONER

v.

No. 4:23-cv-00350-JM-JTK

DEXTER PAYNE, Director,  
Arkansas Division of Correction

RESPONDENT

RECOMMENDED DISPOSITION

The following Recommended Disposition has been sent to United States District Judge James M. Moody, Jr. You may file written objections to all or part of this Recommendation. If you do so, those objections must: (1) specifically explain the factual and/or legal basis for your objection; and (2) be received by the Clerk of this Court within fourteen (14) days of the date of this Recommendation. If you do not file objections, Judge Moody may adopt this Recommendation without independently reviewing all of the evidence in the record. By not objecting, you may waive the right to appeal questions of fact.

\*

Parnell R. May seeks *habeas* relief from his state court capital murder conviction and life imprisonment sentence. The Pulaski County jury found May acted with premeditation and deliberation when he killed his girlfriend, Anna Morales.<sup>1</sup> The Arkansas Supreme Court affirmed the capital murder conviction and life sentence, *May v. State*, 2022 Ark. 216, 655 S.W.3d 74, and the United States Supreme Court denied *certiorari*, *May v. Arkansas*, 143 S. Ct. 2593 (2023)

<sup>1</sup> May was initially charged with first-degree murder and proceeded *pro se*. After May was disruptive and failed to follow court rules during the first-degree murder trial, the trial court revoked May's right to proceed *pro se* and appointed standby counsel. At the request of May and standby counsel, the trial court granted a mistrial to allow standby counsel to prepare a defense. On appeal, the Arkansas Court of Appeals held that, because May was "not goaded into requesting a mistrial," the trial court's mistrial order was not a violation of the double-jeopardy bar. *May v. State*, 2019 Ark. App. 443, \*10, 587 S.W.3d 257, 262. While May's appeal was pending, the prosecution filed an amended felony information, charging May with first-degree murder and capital murder. Doc. 14-15.

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(Mem). May proceeded *pro se* at trial of the Arkansas Rules of Criminal Procedure, 1, 2023.<sup>2</sup> *Doc. 1*.

conviction relief pursuant to Rule 37

a federal *habeas* petition on April

In *May*, the Arkansas Supreme

mostly undisputed facts:

At trial, James Woodell testified that in 2016, he was living in a duplex next door to May and Morales. He asked Woodell if he would come over, and Woodell agreed, followed her next door, and Woodell heard May arguing, and Woodell heard Morales say, "I'll put you six foot down[.]" that night, Woodell was getting into his car. He knocked on May's door, while she was taking pictures with his cell phone. She was moving a little bit and was drunk. When May finally turned on the radio, and May did so.

In 2016, he was living in a duplex next door to May and Morales. He asked Woodell if he would come over, and Woodell agreed, followed her next door, and Woodell heard May arguing, and Woodell heard Morales say, "I'll put you six foot down[.]" that night, Woodell was getting into his car. He knocked on May's door, while she was taking pictures with his cell phone. She was moving a little bit and was drunk. When May finally turned on the radio, and May did so.

Around 7:00 the next morning, Woodell saw Morales lying outside on the porch step. He then saw May, so he nudged her with his foot, and he saw bruising on her face, and he called the police. Woodell also recalled that he did not see May at the duplex around noon that day to the evening and noticed a pair of boots on the porch. He left and called the police. They found May in a bedroom between two mattresses.

At trial, Woodell testified that in 2016, he saw Morales lying outside on the porch step. He then saw May, so he nudged her with his foot, and he saw bruising on her face, and he called the police. Woodell also recalled that he did not see May at the duplex around noon that day to the evening and noticed a pair of boots on the porch. He left and called the police. They found May in a bedroom between two mattresses.

2022 Ark. 16, \*1–2, 655 S.W.3d at 76–77.

body was outside on the front steps with

When officers arrived at the duplex, Morales's

attempts to revive Morales at the scene

<sup>2</sup> The presiding Court dismissed without prejudice the proposed findings and recommendations of the court, and that his direct appeal was active and pending. 4:22-cv-653-JM, *Doc. 5* (E.D. Ark. Aug. 11, 2022). No. 4:22-cv-653-JM-JTK, No. 3 (July 6, 2022). *May v. Musselwhite*, No. 22-2779 (8th Cir. Nov. 4, 2022).

On July 15, 2022. The Court adopted the finding that May had not exhausted state court remedies. *May v. Musselwhite*, No. 22-2779, 2022 WL 3300000 (8th Cir. July 15, 2022). The Court of Appeals dismissed May's appeal. *May*

Appendix C  
0/0/00

and in the emergency room were unsuccessful. Dr. Stephen Erickson, the State Crime Lab deputy chief medical examiner, performed the autopsy. He determined Morales's cause of death was multiple blunt-force injuries by homicide. In other words, "she was beaten to death." *Doc. 14-8 at 113*. In the autopsy report, Dr. Erickson noted "severe blunt-force injuries were present on Morales's head, trunk, and extremities, with extensive internal injury to the scalp, thick subdural hemorrhage, multiple fractured ribs, and a severely lacerated liver." *Doc. 14-5 at 129*. A metal pipe and wooden walking stick were found in the duplex. DNA profiles from the ends of the metal pipe and wooden stick, and from May's boots, matched Morales's DNA sample.

Proceeding *pro se*, May testified at trial. The Arkansas Supreme Court summarized his testimony:

May testified on his own behalf and admitted that he and Morales began fighting the afternoon of December 3 because she thought he was watching pornography. May admitted that he had been drinking, hit her, and "in this situation, it was too extreme[.]" He acknowledged that he had beat her "over and over" with the stick but claimed that "that iron pipe never touched her." He admitted beating her for ten minutes and acknowledged causing all of her injuries that were depicted in the medical examiner's photographs except for her tooth being knocked out. He described the injuries he had inflicted as "vicious" and "violent." He nonetheless claimed that he was not guilty of causing her death. He asserted that Morales died from a combination of the cold weather and resuscitation efforts by first responders.

2022 Ark. 216, \*4, 655 S.W.3d at 78.

\*

May, a state prisoner, may seek a writ of *habeas corpus* in federal court, if he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Before seeking *habeas* review, May must have exhausted available state remedies by fairly presenting each of his claims in state court. *Coleman v. Thompson*, 501 U.S. 722, 731 (1991); *O'Sullivan v. Boerckel*, 526 U.S. 838, 848 (1999).

On claims adjudicated on the merits, this Court may grant *habeas* relief only if May satisfies 28 U.S.C. § 2254(d) requirements and United States Supreme Court “precedents governing the appropriate exercise of equitable discretion.” *Brown v. Davenport*, 596 U.S. 118, 134 (2022). May must demonstrate that the state court adjudication “(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d). May also must pass the *Brecht* test for assessing the state court error’s prejudicial effect. *Brown*, 596 U.S. at 134. He must show the error had “substantial and injurious effect or influence” on the verdict or sentence. *Brecht v. Abrahamson*, 507 U.S. 619, 622 (1993) (quotations omitted).

A claim is procedurally defaulted when the state court declined to review it because the petitioner failed to comply with a state procedural rule. *Coleman*, 501 U.S. at 729–32. Procedural default also occurs when a petitioner did not present a claim in state court and a state court remedy is no longer available. *O’Sullivan*, 526 U.S. at 848. If a claim is procedurally defaulted, this Court can consider it only if May establishes either cause for the default and actual prejudice, or that the default will result in a fundamental miscarriage of justice. *Coleman*, 501 U.S. at 750.

\*

784 May first contends there was insufficient evidence to find him guilty of capital murder. He made a similar argument in state court. Denying relief, the Arkansas Supreme Court held substantial evidence supported the guilty verdict. *May*, 2022 Ark. 216, \*4-6, 655 S.W.3d at 78–79. The Supreme Court’s denial of May’s sufficiency point under the substantial evidence

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standard was an adjudication of the *habeas* due process claim. *Dansby v. Payne*, 766 F.3d 809, 817–18 (8th Cir. 2014). Deference review under 28 U.S.C. § 2254(d)(1) therefore is appropriate.

The recommended finding is that the Arkansas Supreme Court's decision was not contrary to, or an unreasonable application of, federal law; nor was it an unreasonable determination of the facts. 28 U.S.C. § 2254(d)(2). The Due Process Clause forbids a conviction when "no rational trier of fact could have found proof of guilt beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 324 (1979). The *Jackson* standard does not permit reweighing the evidence; inconsistencies must be resolved in favor of the prosecution. *Id.* at 319. Under Arkansas law, a person commits capital murder if, with the premeditated and deliberated purpose of causing the death of another person, he caused the death of any person. Ark. Code Ann. § 5-10-101(a)(4). Applying the capital murder definition, the Arkansas Supreme Court held substantial evidence supported the jury's guilty verdict:

[May's] sufficiency challenges center on his contention that, although he admittedly beat Morales on December 3, the State failed to present substantial evidence that his conduct caused her death. Instead, he claims that her death was caused by the resuscitation efforts of first responders or by the cold weather that she endured prior to being found unresponsive on the porch of his duplex the morning of December 4.

Here, Dr. Erickson testified that Morales's cause of death was multiple blunt-force injuries inflicted by another individual. When pressed by May on cross-examination about his theory on causation, Dr. Erickson remained firm that Morales "was beaten to death." He further opined that Morales suffered all of the blunt-force injuries while she was alive, as he saw no postmortem injuries. Additionally, the first responders that transported Morales to the hospital noted that although they attempted to revive her, nothing they did had any physiological response. They further noted that she had "extensive trauma," no vital signs, and was cold to the touch when they arrived.

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Ultimately, May's arguments challenge the credibility of the witnesses at trial. The jury believed Dr. Erickson's testimony that Morales was beaten to death over May's version of events. This determination was strictly within the province of the jury.

*May*, 2022 Ark. 16, \*5-6, 655 S.W.3d at 79.

The recommended finding is that the Arkansas Supreme Court's analysis "was not an unreasonable way for a state court to ensure that a rational trier of fact could have found the requisite elements [of capital murder] beyond a reasonable doubt." *Dansby*, 766 F.3d at 818. This Court further concludes the Supreme Court made a reasonable determination that there was substantial evidence supporting the guilty verdict. On *habeas* review, May continues to challenge Dr. Erickson's conclusion that Morales's death was caused by homicide. He repeats his state court argument that CPR compressions or hypothermia, not the blunt trauma that he inflicted, caused Morales's death. The jury heard May's testimony that he repeatedly struck Morales's torso with a wooden stick. His defense was that "no matter how brutal and violent [the beating] was, [he] didn't cause her death." *Doc. 14-11 at 164*. May claimed that, after he beat the victim, she walked outside with a beer. The jury, however, heard convincing evidence that Morales's death was caused by being repeatedly struck by another person and that she did not have vital signs when emergency responders arrived at the scene. This Court concludes trial evidence more than satisfies the due process standard. Under deference review, the recommendation is denial of the claim.

\*

May contends the trial court's exclusion of Morales's emergency room medical records and uncertified death certificate copy (and an incomplete death certificate) was a violation of his right to due process. He argues that, with these records, he could have challenged Dr. Erickson's

conclusions about Morales's cause of death. The proffered papers are part of the state court record.<sup>3</sup> *Doc. 14-12 at 131-67, 68, 69.*

May made similar arguments on appeal, raising both state evidentiary and constitutional grounds. *May v. State*, CR-22-221 (Ark.) (appellant's petition, filed Aug. 3, 2022). The Arkansas Supreme Court affirmed the trial court's evidentiary rulings but did not address the constitutional issues. *May*, 2022 Ark. 216, \*7-9, 655 S.W.3d at 79-81. The presumption is not rebutted that the Supreme Court adjudicated the due process claims on the merits. *Johnson v. Williams*, 568 U.S. 289, 300-01 (2013). The constitutional claims were not "rejected as a result of sheer advertence." *Id.* at 302-03. The Supreme Court recognized May's constitutional challenges, but there was no basis for finding a due process violation after the Court affirmed the trial court's evidentiary rulings. The Court, moreover, independently reviewed the entire record, as required by state rules, and found no reversible error. *May*, 2022 Ark. 216, \*10, 655 S.W.3d at 81. The mandatory review "fortifies the presumption" that the state court decided May's due process claims on the merits. *Dansby*, 766 F.3d at 832. Because the claims are exhausted, deference review is appropriate. 28 U.S.C. § 2254(d).

The recommended finding is that the Arkansas Supreme Court's decision was not contrary to, or an unreasonable application of, federal law; nor was it an unreasonable determination of the facts. 28 U.S.C. § 2254(d). "Whether rooted in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or the Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *Holmes v. South Carolina*, 547 U.S. 319, 324-25 (2006) (quotations omitted). The

<sup>3</sup> Although May also seems to frame the issue as evidence suppression by the prosecution, he had possession of the papers at trial and attempted to introduce them into evidence. To the extent May raises evidence suppression, the claim fails. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

constitutional right to present a defense is violated when evidence rules “infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve.” *Id.* (quotations omitted). Evidence rules are arbitrary, as written or applied, if they “excluded important defense evidence” but “did not serve any legitimate interests.” *Id.*

May argues only that the excluded papers would have allowed him to challenge Dr. Erickson’s credibility about Morales’s cause of death. He has not developed any convincing argument that state evidentiary hearsay or authentication rules fail to serve a legitimate interest. *Id.* In any event, the trial court permitted May to cross-examine Dr. Erickson at length about Morales’s emergency room records and unofficial death records. *Docs. 14-8 at 191–201 & 14-9 at 1–4.* A finding is therefore recommended that May was not deprived of a meaningful opportunity to present a complete defense. This Court also concludes that May has not demonstrated that any error had “substantial and injurious effect or influence” on the verdict or sentence. *Brecht*, 507 U.S. at 622. Under deference review, the claims should be denied.

\*

May says Dr. Erickson “gave invalid forensic testimonial evidence,” an investigating officer “fabricated evidence and wrote false reports,” and subpoenaed defense witnesses did not appear at trial. *Doc. 2 at 9.* He says there was prosecutorial misconduct and malicious prosecution because the prosecution knew about false testimony. May also contends his capital murder conviction and life sentence are cruel and unusual punishment.

May similarly challenged Dr. Erickson’s testimony on direct appeal. The Arkansas Supreme Court held the point was not preserved for review because May had not made a contemporaneous objection. *May*, 2022 Ark. 216, \*10, 655 S.W.3d at 81. The Supreme Court determined that, to the extent May was raising a sufficiency-of-the-evidence argument, Dr.

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This is the PRIMARY Focus

May contends that he is actually innocent of capital murder—either as a standalone claim or as a gateway to consider procedurally defaulted claims. He continues to challenge Dr. Erickson's finding that the cause of Morales's death was homicide. May, however, has not established that, in light of new evidence, "it is more likely than not that no reasonable juror would have convicted him" of capital murder. *Schlup v. Delo*, 513 U.S. 298, 327 (1995). He does not rely on new evidence that was unavailable at trial and "could not have been discovered earlier through the exercise of due diligence." *Nash v. Russell*, 807 F.3d 892, 899 (2015). The recommended finding therefore is that May has not established gateway actual innocence to overcome procedural default. Because the threshold for a standalone actual-innocence claim is even higher, the recommended finding is that the evidence also falls short of demonstrating a freestanding claim of actual innocence. *House v. Bell*, 547 U.S. 518, 554–55 (2006); *Dansby*, 766 F.3d at 840.

This Lie

IT IS THEREFORE RECOMMENDED THAT: (1) May's Petition for Writ of Habeas Corpus be DENIED, *Doc. 2*; (2) this case be DISMISSED without prejudice; (3) that the motion to amend the petition and for an evidentiary hearing be denied,<sup>4</sup> *Docs. 27 & 28*; and (4) that the remaining motions be denied as moot, *Docs. 29, 33, 34, 35, 36, & 3*

re listing of the Rock  
(36/62)

JEROME T. KEARNEY  
UNITED STATES MAGISTRATE JUDGE

12/3/2024  
DATE

<sup>4</sup> Based on careful review, the proposed amended petition does not offer any new claims for relief. May has not made any convincing record expansion argument under 28 U.S.C. § 2254(e)(2).

Appendix  
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I did say that "Under Schlup Prinnell May is actually innocent of committing any degree homicide based upon New Reliable Exculpatory Evidence" that's a New claim for Relief,

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No. 26-1355

Parnell R. May

Appellant

v.

Dexter Payne, Director, Arkansas Division of Correction

Appellee

---

Appeal from U.S. District Court for the Eastern District of Arkansas - Central  
(4:23-cv-00350-JM)

---

**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 17, 2026

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Susan E. Bindler

Appendix D  
Page 2 of 2

Message-Id:<10039575@ared.uscourts.gov> Subject:Activity in Case 4:23-cv-00350-JM May v. Payne Order on Motion for Relief Content-Type: text/html

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U.S. District Court

Eastern District of Arkansas

#### Notice of Electronic Filing

The following transaction was entered on 2/10/2026 at 12:15 PM CST and filed on 2/10/2026

Case Name: May v. Payne

Case Number: 4:23-cv-00350-JM

Filer:

**WARNING: CASE CLOSED on 01/07/2025**

Document Number: 109

#### Docket Text:

**ORDER denying [108] motion for relief; and directing the Clerk to refuse to accept any further pleadings from this Plaintiff without first seeking review and approval by this Court. Signed by Judge James M. Moody Jr. on 2/10/2026. (jmh)**

4:23-cv-00350-JM Notice has been electronically mailed to:

Kent G. Holt Kent.Holt@arkansasag.gov, christa.warner@arkansasag.gov, ericha.clark@arkansasag.gov, theresa.griffin@arkansasag.gov

4:23-cv-00350 JM Notice has been delivered by other means to:

Parnell R May  
ADC #153557  
EAST ARKANSAS REGIONAL UNIT  
Arkansas Division of Correction  
Post Office Box 970  
Marianna, AR 72360

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp\_ID=1095794525 [Date=2/10/2026] [FileNumber=10039573-0] [6259fe75ccca2b81b3315177c7dd36714156bc3924520df8127248103aa837fe484406a7d3d2cd4a47c474fea5992fbc49b271f01de4c8da0eb234c04d959]]

*This is a denial to Access of court issue*

Appendix E  
Page 1 of 2

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

PARNELL R. MAY

PLAINTIFF ADC #153557

V.

4:23CV00350 JM

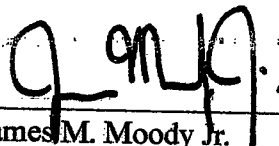
DEXTER PAYNE

DEFENDANT

ORDER

Mr. May's motion for relief (Dkt. No. 108) is DENIED. The Clerk is directed to refuse to accept any further pleadings from this Plaintiff without first seeking review and approval by this Court.

IT IS SO ORDERED this 10th day of February, 2026.

  
James M. Moody Jr.  
United States District Judge



FILED

U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

FEB 11 2026

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EASTERN DISTRICT OF ARKANSAS

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In the United States District Court  
for the Eastern District of Arkansas  
Central Division

TAMMY H. BOWNS, CLERK

DEP. CLERK

Parnell R. May

- Petitioner/Appellant

Vs.

Case Number 4:23-CV-00350-JM

Dexter Payne

- Respondent/Appellee

## Notice of Appeal

Comes Now, Parnell R. May/Mr. May, proceeding pro se, hereby filing this hand-drafted Legal document, where Notice is hereby given that Parnell R. May/Mr. May, petitioner, in this above-entitled matter, appeals to the United States Court of Appeals for the Eighth Circuit, from the final judgment entered in the United States District Court's denial to Mr. May's motion for relief pursuant to Federal Rules of Civil Procedure, Rule 60(a), that was entered on the date of, February 03, 2026, see (Document #105). "Reviewing the district court's ruling on a Rule 60(a) motion for an abuse of discretion," see *Keller Vs. City of Fremont*, 719 F.3d 932, 946 (8th Cir 2013). Mr. May designates the the entire record, as well as the record of Mr. May's Motion for Relief pursuant to Rule 60(a) of the Federal Rules of Civil Procedure, see (Document #102, p. 1-12) (Document #105). This Notice is timely filed within 28 days after entry of judgment, in accordance with Federal Rules of Appellate Procedure, Rule 4(a)(4)-(A).

The issues is the denial to Mr. Mays constitutional right to "A fair opportunity to seek and (enjoy) Federal Habeas relief, from (the Unconstitutional) conviction," *Bonister Vs. Davis*, 590 - U.S. 504, 507 (2000), where such aforementioned constitutional right was denied, by the U.S. district court's denial, to Mr. Mays Motion for Relief under Federal Rules of Civil Procedure, Rule 60(e) see (Document #10, p.1) and (Document #11, p.1), in which Mr. May was entitled by the due process of Law guaranteed by the Fifth, Sixth, and Fourteenth Amendment to the United States Constitution to ~~seek~~ correction to "A clerical mistake or mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record," in accordance with, Rule 60(e) of the Federal Rules of Civil Procedure.

Plus, Mr. May, had a State post-conviction habeas corpus petition, still pending in State Court, at the same time, the U.S. district court Judge James Moody's order and judgment to deny and dismiss Mr. Mays' federal habeas corpus petition, with prejudice, as the court records will clearly reflect, that Mr. May did file a State post-conviction, habeas corpus petition of New scientific evidence of his gateway actual innocence claim, in the State trial court, on the date of October 21<sup>st</sup> 2022, and it was still pending in State Court, at the time the U.S. district Court, dismissed Mr. May's federal habeas petition with prejudice, please see Court records, and (Document #48, p.1) and (Document #49, p.1).

The inadvertent omission of designating the dismissal... of Mr. Mays prior habeas petition, with prejudice, instead of ~~without prejudice~~ where the U.S. district court, flatout, without any explanation of its reason for denying Mr. Mays' Motion for Relief pursuant to Rule 60(c), of the Federal Rules of Civil Procedure, which is clear "abuse of discretion" by the U.S. district Court Judge James Moody, in accordance with, *Baum Vs. Blue Moon Ventures, LLC*, 513 F.3d 181, 193 (5th Cir. 2008) (Document #105, p.1). See, *Keller Vs. City of Fremont*, 719 F.3d 932, 946 (8th Cir. 2013) where it held that, "reviewing the district court's ruling on a Rule 60(c) motion for an abuse of discretion," see also, *Librace Vs. Berryhill*, No. 17-2249, at p.2 (8th Cir. Jan. 24, 2018), (Document #105, p.1). The Ninth Circuit, held that... ~~characterized~~ as a Rule 60(c) correction is a district court's change in its order to reflect dismissal (without) prejudice, where the change conformed the order to the Court's (previous findings and recommendations, that was approved and adopted by the U.S. district Court Judge James Moody) and was regarded as purely technical," see *Huey Vs. Teledyne*, 608 F.2d 1234, 1237 (9th Cir. 1979), see also, *United States Vs. Key*, 731 F.2d 488, 491 (9th Cir. 1984). Accordingly, the U.S. district court Judge James Moody, did abuse his discretion, by failing to correct the clerical mistake, ~~in the order and judgment~~ to reflect dismissal without prejudice, which did conform to the U.S. district court Judge's intent, as it did conform to the order, ~~Id.~~ (Document #39, p.10) (Document #48, p.1) (Document #49, p.1) (Document #102, p.1-12).

The federal fundamental questions are: the legal nature of the action by which the pre-judgment interest came to be included in the judgment whether it was a clerical mistake within Rule 60(c), see *Scola Vs. Bent Frances R. Inc*, 618 F.2d 147, 152 (1st Cir 1980), whether the inadvertent omission of the word "without" prejudiced Mr. May's fair opportunity to seek and (enjoy) federal habeas relief from an (unconstitutional) conviction, *Banister Vs. Davis*, 590 US 507 (2020), where, had the previous district court's conclusion in its writ of habeas corpus is Dismissed (without) prejudice, see (Document #30, p. 10) (Document #49, p. 1), that, such, proper text, would read in the record, in harmony, with the specific expressed order of the United States district Court Judge James Moody's, petition, and intervention order that, "After careful review of the findings and Recommendations" from United States Magistrate Judge Jerome T. Kearney, "... The Court concludes that the findings and Recommendations should be, and are hereby, approved and adopted as this Court's findings in their entirety", see (Document #48, p. 1), where such findings and recommendations, it was clearly specifically founded and recommended that, "... May's petition for Writ of Habeas Corpus be Denied and this case be Dismissed without prejudice", see (Document #30, p. 10), which would have legally permitted Mr. May to refile his petition for writ of habeas corpus, with the same

→ Court, to present his claim of New (medical) scientific evidence of his gateway actual innocence, in accordance with, Sentek International Inc Vs. Lockheed Martin Corp., 531 U.S. 497, 505 (2001), whereas, at the time of the previous U.S. district court's judgment to Mr. May's first/initial/previous federal habeas corpus petition, such claim of his New (medical) scientific evidence of his actual innocence, was raised/presented in ~~the~~ State habeas corpus petition, pursuant to Act 1780 of 2001 as amended by Act 2250 of 2005 codified by Arkansas Code Annotated Section 16-112-201 to 208, where such, State post-conviction petition had been filed in the Pulaski County First division circuit court/State trial court, on the date of, October 21<sup>st</sup> 2022, and such State post-conviction petition, had been pending in the State trial court, ever since, October 21<sup>st</sup> 2022, and on the date of, January 7<sup>th</sup> 2025, which was, the date that the previous U.S. district court, entered its order and judgment to Mr. May's federal habeas corpus petition, see (Doc #48) (Doc #49). Accordingly, Mr. May's claim of actual innocence, was filed in the State trial court, approximately six months before he had filed his federal habeas corpus petition in the U.S. district court on April 12<sup>th</sup> 2023, ... therefore, legally, his ~~State post-conviction petition~~ ~~of his actual innocence claim in State court~~ was filed before his federal habeas petition, and was still pending in State court, during the federal habeas proceedings, and was not properly exhausted in State Court.

Obviously, ... "the order and/or judgment was prepared by the clerk of court/judicial assistant who unwillingly translated the incorrect language of the order into the conclusion of the order, and the final judgment." *Rever v. PMS Stores, Inc.*, 647 F.3d 188, 192, 80 Fed.R. Serv. 3d 278 (5th Cir. 2011).

The previous U.S. district court's intent in entering the original judgment, can be clearly understood by reading the U.S. district court's expressed statement of its careful consideration, of the U.S. Magistrate Judge Jerome T. Keaney's findings and recommendations, and, careful consideration of the de novo review of the record, whereby such careful de novo review of such record, it is legally reasonable for the U.S. Magistrate Judge Jerome T. Keaney to have realized that Mr. May's claim of actual innocence based on New (medical) scientific evidence, was unexhausted, and still pending in State Court, and then ~~based on~~ such findings, recommended, that Mr. May's previous federal habeas corpus petition be dismissed without prejudice. ... Consequently, that is the reason, for the U.S. district Court Judge James Moody, clearly expressed and stated his actual intent to, ~~approve and adopt as~~ the U.S. district court's ~~findings and recommendations~~ and findings, "in their entirety," that Mr. May's previous federal habeas corpus petition be dismissed without prejudice, and this is based on the order, where such order made it clear, that

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Such dismissal was "without prejudice", just as it was recommended in the findings and recommendations of from the United States Magistrate Judge Jerome T. Kearney, ... otherwise the United States district court Judge James Moody would have been clearly expressed and stated in his ~~recommendation~~ off the order about, "After careful review of the findings and recommendations" that the Court concludes that the findings and recommendations should be, and are hereby, ... approved and adopted as this Court's findings in their entirety, which should reflect the U.S. Magistrate Judge's findings and recommendations, in their entirety, Rivera Vs. PNS Stores Inc, 647 F.3d 201 197, therefore, the dismissal without prejudice was intended by the previous U.S. district court to be approved and adopted by the actual, "Recommended findings of the facts and conclusion of law", Three Dillards Construction Company Inc., Inc, 922 F.2d 495, 496 (8th Cir 1991), in their entirety, (Document # 30, p. 10) (Document # 48, p. 1). While on the other hand, the U.S. district court Judge James Moody, did clearly ~~express~~ abuse of discretion by denying Mr. May's Motion for relief pursuant to Rule 60 (a), where it was clearly apparent that, Mr. May's Motion for relief should have been granted, and that, the U.S. district court should have ordered the clerk to correct the "inadvertently designating" to Mr. May's prior federal habeas petition from the ~~dismissal without prejudice~~ to the dismissal without prejudice, accordingly.

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The Eighth Circuit held that, "We regard the situation here as also one of 'clerical mistake' within the meaning and reach of Rule 60(a). We are not persuaded by the defense argument that the Rules reference to clerical mistake is necessarily confined to one committed only by the clerk. Professor Moore is not so persuaded, for he states unequivocally, 'Relief may be had from the clerical mistake of the court, clerk, jury or party.'"

6A Moore's Federal Practice, par. 60.06 3, p. 4044 (2d Ed. 1966).

Neither was the court which decided *In re Merry Queen Transfer Corp*, 266 F.Supp. 605, 607 (E.D.N.Y. 1967), see *Pattiz Vs. Schwartz*, 386 F.3d. 300, 303 (8th Cir. 1968).

The Fifth Circuit held that, "We hold that Federal Rules of Civil Procedure Rule 60(a), authorizes the court to undo the effect of the clerical mistake," see *American Precision Vibrator Co. Matter of*, 863 F.2d 428, (5th Cir. 1989). "Rule 60(a) empowers courts to correct clerical mistakes in judgments, orders or other parts of the record, and errors therein arising from oversight or omission." Application of Rule 60(a) requires us to balance two competing concerns. Equitable consideration mandate that we interpret the Federal Rules of Civil Procedure liberally to avoid miscarriage of justice, see *American Precision Vibrator Co. Matter of*, 863 F.2d, at 429, see also, *Chavez Vs. Balesh*, 704 F.2d, 774, 776 (5th Cir. 1983).

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It is clearly apparent by the record that the U.S. District Court Judge James M. Mady had simply intended to ~~dismiss~~ adopt the U.S. Magistrate Judge Thomas E. Keenan's findings and recommendations for the habeas petition, which, was recommended to dismiss Mr. May's habeas petition without prejudice, see Document #39.

Accordingly, because the district court denied Mr. May's Motion for Relief under Rule 60(a), where Mr. May asked the district court to change the judgment targeting the clerical mistake of, "Inadvertently designating a dismissal as being (with prejudice) instead of (without prejudice) (which) is the type of rote typographical error of transcription that could be committed by a law clerk or a judicial assistant," see *Rivera Vs. PNS Stores Inc.*, 647 F.3d, 188, 194 (5th Cir. 2011).

Consequently, where the district court denied Mr. May's motion for relief under Rule 60(a), where he only sought to correct the clerical mistake, where the judgment ~~is~~ his prior/initial federal habeas corpus petition, was "inadvertently designated to be dismissed (with prejudice) instead of (without prejudice)..."

*Rivera Vs. PNS Stores Inc.*, 647 F.3d, at 194, "...where the proper judgment of dismissal without prejudice..." is dismissal without, barring (Mr. May) from returning later to the same court, with the same underlying claim of "Newly discovered/Newly reliable evidence of his gateway actual innocence," see *Sentek International Inc. Vs. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001) (quoting *Schlup*

While on the contrary, the district court's denial to Mr. May's motion for relief under Rule 60(a), that he did invoke, to correct the clerical mistake, of the prior district court's judgment, where the prior district court did inadvertently designated the dismissal of Mr. May's prior/initial federal habeas corpus petition, with prejudice, ~~instead~~ of without prejudice, which would have provided to Mr. May, the right of a fair opportunity to seek federal habeas relief from the (unconstitutional) conviction in accordance with, Sentek International Inc. Vs. Lockheed Martin Corp, 531 US, at 505, Banister, 590 US, at 507, where failure to entertain (such) federal habeas corpus claim, of Mr. May's newly discovered evidence of his gateway, actual innocence, will result, into a fundamental miscarriage of justice against Mr. May, in accordance with, Schlup, 513 US, at 324, McQuiggin Vs. Perkins, 569 US, 383, 394-395 (2013), see also McCleskey Vs. Zant, 499 U.S. 467 495 (1991). Accordingly, Mr. May did satisfy the certificate of appealability standard by demonstrating that, jurists of Reason, ~~in fact~~, could disagree with the district court's resolution of (Mr. May's) case (~~and on~~) the issues presented were adequate to ~~deserve~~ encouragement to proceed further, see Slack 529 U.S. at 484. (Mr. May) need not convince a judge or for that matter, three judges that he will prevail. (Mr. May) did demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims of Mr. May's Motion for Relief

→ Under ~~Rule 60(a)~~, that targeted the clerical mistake, in the  
 prior district court's judgment, to his prior/initial federal  
 habeas corpus petition, where the prior district court, did not  
 to designate the dismissal of Mr. May's prior/initial federal  
 habeas corpus petition without prejudice, so that he can later  
 refile his claim of newly discovered evidence of his gateway  
 actual innocence, in a federal habeas corpus petition, in the  
 federal habeas corpus court, in accordance with Semtek Inter-  
national Inc Vs. Lockheed Martin Corp., 531 U.S. at 505, because  
 a constitutional error, did result into the conviction of Mr. May,  
 who is actually innocent of capital murder, in light of newly  
 reliable evidence that was not presented at trial," Schlup, 513-  
U.S. at 314-332, in which, such denial to Mr. May's motion for  
 relief under Rule 60(a), did deny to Mr. May, his constitutional  
 right to enjoy due process of law, "A fair opportunity, to seek  
 (such) federal habeas relief, from (such) (constitutional) convict-  
 ion," Banister, 590 U.S. at 507, where that, reasonable jurists would  
 find the district court's assessment of the constitutional claims  
 debatable and/or wrong," Slack, 529 U.S. at 484, see Miller-El  
Vs. Cockrell, 537 U.S. 322, 323-325 (2003), in fact, reasonable  
 jurists could agree that the petition for relief under Rule 60  
 (a) should have been resolved in a different manner," Slack, 529 U.S. →

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→ At 484, such as, the district court should have granted Mr. May's motion for relief pursuant to Rule 60(e), of the Federal Rules of Civil Procedure. The U.S. district court Judge James Meek, did clearly exercise, abuse of discretion, where, his denial to Mr. May's Motion for relief pursuant to Rule 60(e), was, "A clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented," see *Eizember Vs Oklahoma*, 164 P.3d 208, 222, (Okla. Crim. App. 2007), where Mr. May did show, clear evidence of the apparent fact, that, such clerical mistake or mistake arising from oversight or omission, which was, clearly, not null and in (the) judgment order, and in the Record, in accordance with Federal Rules of Civil Procedure, Rule 60(e).

### Conclusion

Accordingly, Mr. May, exercise his right to appeal, such as, to respectfully, ask this Court, and/or the United States Court of Appeals for the Eighth Circuit, to ~~reversal~~ reverse the U.S. district court's denial to the Motion for relief pursuant to Rule 60(e), of the Federal Rules of Civil Procedure, where such denial, did deny to Mr. May his constitutional right to such due process of law, as aforementioned, and demand that such Court to the U.S. district court with such order and/or instructions, granting such Rule 60(e) motion,.

Respectfully Submitted

sign: Perve/K. May Pro se

date: February 7<sup>th</sup> 2026

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