

United States Court of Appeals

Fifth Circuit

F I L E D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

June 21, 2006

Charles R. Fulbruge III
Clerk

No. 04-20993
Conference Calendar

CLINTON W. DELESPINE,

Petitioner-Appellant,

versus

NATHANIEL QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CV-2960

Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Clinton W. Delespine, Texas prisoner # 187450, has filed a motion for a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2254 application challenging his 1963 conviction and sentence for murder as successive.

To obtain a COA, Delespine must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). When the district court has denied relief on procedural grounds,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the applicant must show "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Delespine does not challenge the district court's dismissal of his § 2254 application as successive and argues only the merits of his habeas claims. Therefore, he has abandoned the issue and has failed to demonstrate that reasonable jurists would debate the district court's procedural ruling. See Hughes v. Johnson, 191 F.3d 607, 613 (5th Cir. 1999); Slack, 529 U.S. at 484. Accordingly, Delespine's motion for a COA is DENIED. Delespine's motion for leave to proceed in forma pauperis on appeal is also DENIED.

This is the seventh COA motion in which Delespine has failed to challenge the district court's reasons for dismissing his habeas application. Further, this court previously warned Delespine that further frivolous applications would invite the imposition of sanctions. See Delespine v. Cockrell, No. 01-20846 (5th Cir. Oct. 17, 2001) (unpublished). Accordingly, IT IS ORDERED that Delespine pay a monetary sanction of \$200 to the Clerk of this Court. Delespine is BARRED from filing in this court or in any court subject to this court's jurisdiction any pleading that challenges the aforementioned conviction and sentence until the sanction is paid in full. Delespine is

CAUTIONED that any future frivolous or repetitive filing in this court or any court subject to this court's jurisdiction will subject him to additional sanctions. Delespine should review all pending appeals to ensure that they are not frivolous.

MOTIONS DENIED; SANCTION IMPOSED; SANCTION WARNING ISSUED.