

United States Court of Appeals for the Fifth Circuit

No. 23-30687
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
December 21, 2023

Lyle W. Cayce
Clerk

CHARLES K. WALLACE,

Petitioner—Appellant,

versus

LOUISIANA STATE,

Respondent—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:23-CV-5242

Before JONES, SOUTHWICK, and HO, *Circuit Judges.*

PER CURIAM:*

Charles K. Wallace, Louisiana prisoner # 093248, appeals the district court's order construing his 28 U.S.C. § 2241 petition as an unauthorized successive 28 U.S.C. § 2254 application and transferring it to this court. He additionally moves for the appointment of counsel.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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Wallace first argues that the district court improperly construed his § 2241 petition as a § 2254 application. Given that Wallace's § 2241 petition challenged the validity of his second degree murder conviction, the district court properly construed the petition as filed pursuant to § 2254. *See Hartfield v. Osborne*, 808 F.3d 1066, 1071-73 (5th Cir. 2015).

Our review of Wallace's remaining arguments likewise show no error. Given that Wallace's constructive § 2254 application challenged the validity of the same second degree murder conviction that he challenged in his prior § 2254 application, the district court correctly determined that the application was successive. *See Leal Garcia v. Quarterman*, 573 F.3d 214, 220-21 (5th Cir. 2009).

Accordingly, the district court's transfer order is AFFIRMED. Wallace's motion for the appointment of counsel is DENIED.