

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 27, 2026

Christopher M. Wolpert
Clerk of Court

ANTHONY EMMETT HAMILTON, JR.,

Petitioner - Appellant,

v.

TOMMY SHARP, Interim Warden,

Respondent - Appellee.

No. 26-5056
(D.C. No. 4:22-CV-00434-SEH-SH)
(N.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **MORITZ, BALDOCK**, and **EID**, Circuit Judges.

Anthony Hamilton, an Oklahoma prisoner proceeding pro se,¹ seeks a certificate of appealability (COA) to challenge the district court's denial of his 28 U.S.C. § 2254 petition. Because he fails to establish that reasonable jurists could debate the district court's procedural and substantive rulings, we deny a COA and dismiss this matter.

Background

In 1997, an Oklahoma jury convicted Hamilton of first-degree murder. Hamilton was sentenced to life imprisonment with the possibility of parole. He appealed to the

* This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

¹ Although we liberally construe Hamilton's pro se filings, we do not act as his advocate or create arguments on his behalf. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

Oklahoma Court of Criminal Appeals and twice sought state postconviction relief, all to no avail.

In 2022, Hamilton filed a § 2254 petition, challenging the lawfulness of his custody. He alleged a deprivation of his (1) Sixth and Fourteenth Amendment right to effective assistance of appellate counsel, (2) Fourteenth Amendment right to due process, based on the state’s failure correct false testimony by two of its witnesses, and (3) Fourteenth Amendment due-process rights, based on the state’s exercising jurisdiction over him as an Indian. The district court dismissed the first two claims as untimely under 28 U.S.C. § 2244(d). And it denied relief on the third claim under § 2254(d), reasoning that the state court’s adjudication of the claim did not result in a decision “contrary to, or involv[ing] an unreasonable application of, clearly established [f]ederal law” or a decision “based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate[-] court proceeding.” § 2254(d). The district court further concluded that reasonable jurists would not debate its rulings, so it denied Hamilton a COA.

Hamilton now seeks a COA from this court. *See* 28 U.S.C. § 2253(c)(1)(A).

Analysis

We may issue a COA under § 2253(c)(1) “only if the applicant has made a substantial showing of the denial of a constitutional right.” § 2253(c)(2). In practice, this means showing “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v.*

McDaniel, 529 U.S. 473, 483–84 (2000) (cleaned up) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When a district court rejects a constitutional claim on the merits, we will issue a COA if “[t]he petitioner . . . demonstrate[s] that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* at 484. But “[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim,” the petitioner must show that reasonable jurists would find both the procedural ruling debatable and “find it debatable whether the petition states a valid claim of the denial of a constitutional right.” *Id.*

Here, Hamilton maintains his second and third claims, which the district court rejected on procedural and substantive grounds, respectively. But he fails to make the necessary showings to obtain a COA. Beginning with his third claim, Hamilton briefly reiterates his position that the state trial court lacked jurisdiction over him. But he does not address the district court’s conclusion that § 2254(d) bars relief on this claim. Accordingly, Hamilton has “waived any potential challenge” to the district court’s resolution of the third claim. *Davis v. McCollum*, 798 F.3d 1317, 1320 (10th Cir. 2015).

In support of the second claim, Hamilton insists that police “told” and “forced” one of the witnesses at his criminal trial to lie, Aplt. Br. 2, 4, and that the witness committed perjury and “coerc[ed] another[] witness” to do the same, *id.* at 2. Hamilton suggests that the district court erred in dismissing this claim as untimely because, according to Hamilton, the claim raises “fraud upon the court” and “[t]here is no statute of limitation[s] for bringing” such claims. *Id.* But as Hamilton recognizes, and as the

district court reasoned, “[f]raud on the court is fraud which is directed to the judicial machinery itself and is not . . . false statements or perjury.” *Robinson v. Audi Aktiengesellschaft*, 56 F.3d 1259, 1266 (10th Cir. 1995) (cleaned up) (quoting *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985)). And to the extent that a prosecutor’s *knowing* use of perjured testimony constitutes fraud on the court, Hamilton does not argue that the state knew the witnesses’ testimonies were false. *Cf. Gay v. Graham*, 269 F.2d 482, 486 (10th Cir. 1959) (recognizing that “[s]tate’s knowing use of perjured testimony does constitute denial of due process”). Hamilton therefore fails to show that “jurists of reason would find it debatable whether the district court was correct in its procedural ruling” that his perjured-testimony claim was untimely. *Slack*, 529 U.S. at 484.

Conclusion

Because reasonable jurists could not debate the district court’s procedural and substantive rulings, we deny Hamilton’s COA request and dismiss this matter. But we grant his motion to proceed in forma pauperis.

Entered for the Court

Nancy L. Moritz
Circuit Judge