FILED
United States Court of Appeals
Tenth Circuit

August 31, 2023

Christopher M. Wolpert
Clerk of Court

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

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DAVID BRIAN MORGAN,

Petitioner - Appellant,

v.

UNITED STATES OF AMERICA,

Respondent - Appellee.

No. 23-2079
(D.C. No. 1:22-CV-00891-JB-SCY)
(D.N.M.)

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**ORDER DENYING CERTIFICATE OF APPEALABILITY***

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Before **BACHARACH**, **KELLY**, and **MORITZ**, Circuit Judges.

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David Morgan, an Oklahoma prisoner proceeding pro se,[1] seeks a certificate of appealability (COA) to challenge the district court's order dismissing his 28 U.S.C. § 2254 habeas petition for lack of jurisdiction. Because reasonable jurists could not debate that the district court lacked jurisdiction to entertain Morgan's petition, we deny his request for a COA and dismiss this matter.

In 2011, Morgan pleaded guilty in Oklahoma state court to 13 counts, including rape, molestation, kidnapping, and possessing weapons. The state court sentenced him to

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* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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] We construe Morgan's pro se filings liberally, "but we will not act as his advocate." *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

life in prison. Nearly three years later, Morgan filed a § 2254 petition seeking to set aside his convictions and sentences. The district court dismissed that petition as untimely, and we affirmed. *See Morgan v. Addison*, 574 F. App'x 852 (10th Cir. 2014). Since then, Morgan has mounted multiple other unsuccessful challenges to his convictions and sentences, both in this circuit and others. *See, e.g.*, *Morgan v. Oklahoma*, 778 F. App'x 610, 611 (10th Cir. 2019) (noting that Morgan had "filed several successive habeas petitions" and that the "action [at issue was] Morgan's latest attempt to file yet another" one); *Morgan v. United States*, No. 22-cv-00066, 2022 WL 3704682 (S.D. Ind. May 13, 2022); *Morgan v. United States*, No. CV 23-543, 2023 WL 2496878 (D.D.C. Mar. 13, 2023), *appeal docketed*, No. 23-5112 (D.C. Cir. May 18, 2023).

As relevant here, Morgan filed a § 2254 petition late last year in the District of New Mexico. Acting sua sponte, the district court determined that Morgan should have filed the petition in the Western District of Oklahoma because his place of confinement lies within that judicial district's geographic boundaries and, by statute, federal courts may grant habeas relief only "within their respective jurisdictions." 28 U.S.C. § 2241(a). After concluding that a jurisdictional transfer was not "in the interest of justice," the district court dismissed the petition for lack of jurisdiction. R. 52. It also declined to issue a COA.

Morgan now requests a COA from us to appeal the district court's order dismissing his petition. *See* 28 U.S.C. § 2253(c)(1)(A). We may grant that request only if Morgan shows "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) (emphasis added). If we conclude that reasonable jurists would not debate the district court's procedural ruling, we need not address the constitutional question. *Id.* at 485.

Reasonable jurists would not debate the district court's ultimate conclusion that it lacked jurisdiction to consider Morgan's § 2254 petition, although for a different reason than that cited by the district court.[2] *See Davis v. Roberts*, 425 F.3d 830, 834 (10th Cir. 2005) ("[W]e may deny a COA if there is a plain procedural bar to habeas relief, even though the district court did not rely on that bar."). As Morgan should know by now, petitioners who wish to file "a second or successive" § 2254 petition must first obtain an order "from the appropriate court of appeals . . . authorizing the district court to consider

[2] Recall that the district court sua sponte dismissed Morgan's § 2254 petition for lack of jurisdiction because he filed it outside the district of confinement. *See* § 2241(a) (authorizing federal courts to grant habeas relief only "within their respective jurisdictions"). Although courts can "sua sponte raise the question of whether there is subject[-]matter jurisdiction," *1mage Software, Inc. v. Reynolds & Reynolds Co.*, 459 F.3d 1044, 1048 (10th Cir. 2006), the Supreme Court has made clear that § 2241(a) does not limit a district court's subject-matter jurisdiction, *see Rumsfeld v. Padilla*, 542 U.S. 426, 434 n.7 (2004). Instead, "the question of the proper location for a habeas petition is best understood as a question of personal jurisdiction or venue." *Id.* at 451–52 (Kennedy, J., concurring). The district court, though, relied on *Trujillo v. Williams*, 465 F.3d 1210 (10th Cir. 2006), to determine that it could nevertheless dismiss the petition sua sponte under § 2241(a) because the procedural defect was "clear from the face of the proceeding." R. 51; *see also Trujillo*, 465 F.3d at 1217 (holding that under 28 U.S.C. § 1915(e)(2), district courts "may consider personal jurisdiction and venue sua sponte ' . . . when the defense is obvious from the face of the complaint'" (quoting *Fratus v. DeLand*, 49 F.3d 673, 674–75 (10th Cir. 1995))). But *Trujillo* was not a habeas case—it addressed only a district court's authority under § 1915(e)(2) to sua sponte dismiss an in forma pauperis complaint for lack of personal jurisdiction and improper venue. *See Trujillo*, 465 F.3d at 1217. Whether a district court may sua sponte dismiss a habeas petition under § 2241(a) is a question we leave for another day.

the [petition].” 28 U.S.C. § 2244(b)(3)(A); *see also Morgan v. Oklahoma*, 778 F. App’x at 611–12 (denying COA because reasonable jurists could not debate that petition at issue was unauthorized second or successive petition). If the petitioner fails to do so, the district court lacks jurisdiction to entertain the petition. *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (per curiam). And here, Morgan never secured an order from us authorizing him to file his successive § 2254 petition, so the district court had no jurisdiction to consider it. Given this plain procedural bar, Morgan is not entitled to a COA. *See United States v. Springer*, 875 F.3d 968, 981–83 (10th Cir. 2017) (denying COA based on “‘plain procedural bar’” against “unauthorized second or successive petition[s],” even though district court failed to invoke that bar (quoting *Davis*, 425 F.3d at 834)).

Because reasonable jurists could not debate that the district court lacked jurisdiction to entertain Morgan’s § 2254 petition, we deny a COA and dismiss this matter.

Entered for the Court

Nancy L. Moritz
Circuit Judge