

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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January 31, 2014

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 13-60896 In re: Tavares Flaggs

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Dantrell L. Johnson, Deputy Clerk
504-310-7689

Ms. Alysson Leigh Mills

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 13-60896

United States Court of Appeals
Fifth Circuit

FILED

January 31, 2014

Lyle W. Cayce
Clerk

In re: TAVARES ANTOINE FLAGGS,

Movant.

Motion for an Order Authorizing
the United States District Court
for the Southern District of Mississippi
To Consider a Successive 28 U.S.C. § 2254 Application

Before JOLLY, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:

Tavares Flaggs, Mississippi prisoner # M1616, is serving a life sentence for murder. He moves this court for authorization to file a second or successive 28 U.S.C. § 2254 application.

For authorization, Flaggs must show (1) that his proposed claims rely on a new rule of constitutional law that was previously unavailable and that was made retroactive to cases on collateral review by the Supreme Court, § 244(b)(2)(A); or (2) that the “factual predicate” of his proposed claims could not have been discovered previously through the exercise of due diligence and

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that those facts would establish by clear and convincing evidence that, but for constitutional error, no reasonable trier of fact would have convicted him of the offense. § 2244(b)(2)(B).

Flaggs does not rely on a new rule of law. Rather, he contends that the factual predicate for his claims about the unreliability of pathologist Steven Hayne could not have been discovered before Hayne's deposition in a defamation suit Hayne filed against the Mississippi Innocence Project in response to the Innocence Project's 2008 letter to the Mississippi State Board of Medical Licensure cataloguing evidence of Hayne's malfeasance over the previous years. The evidence providing the factual predicate is not new. Hayne had been widely and publicly criticized for several years before the 2012 deposition and certainly before the filing of Flaggs's first § 2254 application in 2011. Indeed, the deposition merely revisits the facts compiled in the Innocence Project's letter.

Moreover, Flaggs does not show that Hayne's testimony at trial was false or unreliable. Nor does he show by clear and convincing evidence that no jury would have convicted him but for the allegedly unconstitutional admission of Hayne's opinion testimony. *See* § 2254(b)(2)(B)(ii). Flaggs does not satisfy the requirements of § 2244(b)(2)(B) under which we may authorize the filing of a successive § 2254 application.

The motion is DENIED.