

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
TEXAS

John A. Grimes v. Director, TDCJ-CID

No. 6:25-cv-00408 (E.D. Tex. Jan. 9, 2026) · No. 6:25-cv-00408 · Decided January 9, 2026

SUMMARY

The United States District Court for the Eastern District of Texas dismissed John A. Grimes’s habeas petition without prejudice as an unauthorized second or successive petition under 28 U.S.C. § 2244(b). The court overruled his objections, denied a certificate of appealability, and explained that authorization must first be obtained from the Fifth Circuit.

CASE DETAILS

COURT	United States District Court for the Eastern District of Texas
WRITING FOR THE COURT	Campbell Barker
JURISDICTION	United States District Court for the Eastern District of Texas
DECIDED	January 9, 2026
DOCKET	6:25-cv-00408
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner objected to a magistrate judge's report and recommendation recommending dismissal of his 28 U.S.C. § 2254 petition as an unauthorized second or successive petition and denial of a certificate of appealability.
STANDARD OF REVIEW	The district court reviewed the objected-to portions of the magistrate judge's report and recommendation de novo under 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil Procedure 72(b)(3).
PRECEDENTIAL VALUE	Unpublished district court order; persuasive value only
PARTIES	John A. Grimes v. Director, TDCJ-CID

TOPICS

- federal habeas corpus
- successive petitions
- actual innocence
- appellate procedure
- standard of review

PRACTICE AREAS

- Federal habeas corpus
- Post-conviction relief
- Appellate procedure

QUESTIONS PRESENTED

1. Whether a second § 2254 petition raising the same claims is successive when the first petition was dismissed as untimely.
2. Whether the successive-petition bar is inapplicable to claims of actual innocence or ineffective assistance of counsel.
3. Whether the district court had jurisdiction to consider an unauthorized second or successive habeas petition.
4. Whether the magistrate judge's report and recommendation should be adopted after de novo review of petitioner's objections.

HOLDINGS

1. A second § 2254 petition raising the same claims is a successive petition even when the first petition was dismissed as untimely.
2. Claims asserting actual innocence or ineffective assistance of counsel are not categorically exempt from the bar on second or successive habeas petitions; the petitioner must first obtain authorization from the appropriate court of appeals and satisfy one of the grounds in § 2244(b)(2).
3. The district court lacked jurisdiction to consider the unauthorized second or successive habeas petition.

KEY QUOTATIONS

“This case is dismissed without prejudice to petitioner’s ability to seek authorization from the U. S. Court of Appeals for the Fifth Circuit to file a successive habeas petition.” (at 3)

FACTUAL BACKGROUND

Grimes brought a habeas action challenging his murder conviction. The petition raised the same claims as an earlier petition that had been dismissed with prejudice. Grimes did not provide authorization from the Fifth Circuit to file a successive petition and did not allege a new retroactive constitutional rule or newly discovered evidence satisfying 28 U.S.C. § 2244(b)(2).

PROCEDURAL HISTORY

Grimes filed a federal habeas petition challenging his murder conviction. The matter was referred to a magistrate judge, who recommended dismissal without prejudice because the petition was an unauthorized second or successive petition and recommended denial of a certificate of appealability. After reviewing the objections de novo, the district court adopted the report and recommendation, overruled the objections, and dismissed the case without prejudice.

DISPOSITION

dismissed

CASES CITED

- *Vettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir. Unit B 1982) (en banc)
- *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc)
- *Cupit v. Whitley*, 28 F.3d 532, 535 & n.5 (5th Cir. 1994)
- *In re Flowers*, 595 F.3d 204, 205 (5th Cir. 2009) (per curiam)
- *Burton v. Stewart*, 549 U.S. 147, 152-53 (2007) (per curiam)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TEXAS No. 6:25-cv-00408
John A. Grimes, Petitioner, V. Director, TDCJ-CID, Respondent. ORDER Petitioner brought this habeas action to challenge his murder conviction. Doc. 1.

The case was referred to a magistrate judge, who issued a report recommending that the petition be dismissed without prejudice as an unauthorized second or successive petition under 28 U.S.C. § 2244(b) and that a certificate of appealability be denied. Doc. 3 at 5. Petitioner filed written objections but does not deny that this petition raises the same claims as a previous petition that was dismissed with prejudice.

See Doc. 5. The court reviews the objected-to portions of a magistrate judge's report and recommendation de novo. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). However, the objections "must specifically identify those findings objected to. Frivolous, conclusive or general objections need not be considered by the district court." *Vettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir.

Unit B 1982) (en banc), overruled on other grounds by *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc). Furthermore, a party's entitlement to de novo review does not entitle it to raise arguments that were not presented to the magistrate judge without a compelling reason. See *Cupit v. Whitley*, 28 F.3d 532, 535 & n.5 (5th Cir.

1994). Petitioner's first objection is that the prohibition against second or successive habeas petitions does not apply where the first petition was dismissed as untimely rather than denied on the merits. This objection lacks merit. When a § 2254 petition is dismissed as untimely, a second petition raising the same claims is successive.

In re Flowers, 595 F.3d 204, 205 (5th Cir. 2009) (per curiam). Petitioner's second objection is that the bar against successive habeas petitions does not apply to petitions claiming actual innocence or ineffective assistance of counsel. This argument is legally incorrect.

To bring a successive habeas petition, the petitioner must obtain authorization from a three-judge panel of the appropriate court of appeals. *Burton v. Stewart*, 549 U.S. 147, 152-53 (2007) (per curiam). Furthermore, the claim must satisfy "one of the two grounds raised in § 2244(b)(2)." *Id.* at 153. Those grounds are (1) a new retroactive constitutional right announced by the U.S.

Supreme Court, and (2) newly discovered evidence that could not have been discovered earlier with due diligence and would establish by clear and convincing evidence that no reasonable factfinder would have found the petitioner guilty.

28 U.S.C. § 2244(b)(2)(A)–(B). Here, petitioner has not presented an order from the U.S. Court of Appeals for the Fifth Circuit authorizing him to bring a successive habeas petition. Moreover, petitioner has not alleged a new constitutional right or newly discovered evidence. Petitioner's third objection essentially argues that he should be allowed to bring a second habeas petition despite the bar on successive petitions.

However, this court lacks jurisdiction to determine whether the petitioner may file a second habeas petition. *Burton*, 549 U.S. at 152 (holding that “because the... petition is a second or successive petition... the District Court never had jurisdiction to consider it in the first place” (cleaned up)). Petitioner must first seek that authorization from the U.S. Court of Appeals for the Fifth Circuit.

28 U.S.C. § 2244(b)(3)(A). Having reviewed the report de novo and being satisfied that it contains no error, the court accepts the report's findings and recommendations. Petitioner's objections are overruled. This case is dismissed without prejudice to petitioner's ability to seek authorization from the U. S. Court of Appeals for the Fifth Circuit to file a successive habeas petition.

So ordered by the court on January 9, 2026. _flecbok BARKER United States District Judge -3-