

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Johnson v. Allbaugh

No. 18-5068, United States Court of Appeals for the Tenth Circuit (November 9, 2018)

SUMMARY

Johnson v. Allbaugh, 10th Cir. 2018 (unpublished): The Tenth Circuit denied a certificate of appealability (COA) to appeal the district court's dismissal of a third-in-time 28 U.S.C. § 2254 habeas application as successive and unauthorized for lack of jurisdiction. The court held that a prior habeas application dismissed as time-barred constitutes a decision on the merits, making any subsequent petition challenging the same conviction successive. Because the petitioner failed to show that jurists of reason would debate the district court's procedural ruling, the COA was denied and the appeal dismissed.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Timothy M. Tymkovich; Scott M. Matheson Jr.; Robert E. Bacharach
JURISDICTION	Federal
DECIDED	November 9, 2018
DOCKET	18-5068
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the district court's dismissal of a successive habeas application for lack of jurisdiction.
STANDARD OF REVIEW	To obtain a COA on procedural grounds, the petitioner must show that jurists of reason would find it debatable both whether the petition states a valid claim of a constitutional right and whether the district court's procedural ruling was correct. Slack v. McDaniel, 529 U.S. 473, 484 (2000).
PRECEDENTIAL VALUE	unpublished
PARTIES	Tyrone L. Johnson v. Joe M. Allbaugh

TOPICS

- habeas corpus
- criminal procedure
- appellate procedure
- standard of review
- statute of limitations

PRACTICE AREAS

Habeas Corpus

Criminal Procedure

Appellate Procedure

QUESTIONS PRESENTED

1. Whether the district court erred in dismissing Johnson's 2018 § 2254 application as successive and unauthorized.
2. Whether Johnson is entitled to a certificate of appealability.

HOLDINGS

1. No, because Johnson has not shown that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

KEY QUOTATIONS

“Because the district court's ruling rested on procedural grounds, Johnson must show both '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.’” (at 2)

“His previous habeas application, filed in 2012, was dismissed as time-barred. That disposition counted as a decision on the merits. See In re Rains, 659 F.3d 1274, 1275 (10th Cir. 2011) (per curiam).” (at 2)

FACTUAL BACKGROUND

Johnson is an Oklahoma state prisoner convicted in 1993 of four counts of first-degree felony murder and sentenced to life without parole. He filed a § 2254 habeas application in 1999, which he voluntarily dismissed. He filed another in 2012, which was dismissed as time-barred. In 2018, he filed a third § 2254 application challenging the same conviction.

PROCEDURAL HISTORY

Johnson was convicted in 1993. He filed a § 2254 application in 1999, which was voluntarily dismissed. He filed another in 2012, which was dismissed as time-barred, and this court denied a COA. In 2018, he filed a third § 2254 application, which the district court dismissed as successive and unauthorized. Johnson appeals.

DISPOSITION

dismissed

CASES CITED

- Montez v. McKinna, 208 F.3d 862, 866-67 (10th Cir. 2000)
- United States v. Harper, 545 F.3d 1230, 1233 (10th Cir. 2008)
- Slack v. McDaniel, 529 U.S. 473, 484 (2000)

- Hall v. Scott, 292 F.3d 1264, 1266 (10th Cir. 2002)
- In re Rains, 659 F.3d 1274, 1275 (10th Cir. 2011)
- Spitznas v. Boone, 464 F.3d 1213, 1215-16 (10th Cir. 2006)
- In re Cline, 531 F.3d 1249, 1251 (10th Cir. 2008)

CITED IN

- Johnson v. Allbaugh, Johnson v. Allbaugh, 742 F. App'x 395, 396 n.2 (10th Cir. 2018)