

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Drake Finch v. Bobby Lumpkin, Director

No. 19-10369, United States Court of Appeals for the Fifth Circuit (September 4, 2020)

SUMMARY

Fifth Circuit affirmed denial of bond pending federal habeas review. The court held that a prisoner seeking release on bond must show both substantial constitutional claims with a high probability of success and extraordinary circumstances making bond necessary for an effective remedy. Appellant’s allegations of mental health deterioration, ineffective assistance of counsel, and prosecutorial misconduct failed to meet this standard. The court also exercised jurisdiction over the interlocutory appeal under Calley v. Callaway.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Higginbotham; Jones; Costa
JURISDICTION	Federal
DECIDED	September 4, 2020
DOCKET	19-10369
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from district court's denial of motion for release on bond pending resolution of § 2254 application.
STANDARD OF REVIEW	A prisoner may establish conditions for release on bond pending federal habeas review if he raises 'substantial constitutional claims upon which he has a high probability of success' and shows that 'extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.'
PRECEDENTIAL VALUE	Unpublished
PARTIES	Drake Jordan Finch v. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division

TOPICS

- habeas corpus
- bail
- appellate jurisdiction
- criminal procedure

PRACTICE AREAS

Habeas Corpus

Criminal Procedure

Appellate Procedure

QUESTIONS PRESENTED

1. Whether the district court erred in denying Finch's motion for release on bond pending resolution of his § 2254 application.

HOLDINGS

1. A prisoner may establish conditions for release on bond pending federal habeas review if he raises 'substantial constitutional claims upon which he has a high probability of success' and shows that 'extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.' Finch fails to make such a showing.

KEY QUOTATIONS

"A prisoner may establish conditions for release on bond pending federal habeas review if he raises 'substantial constitutional claims upon which he has a high probability of success' and shows that 'extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.'" (2)

"Finch fails to make such a showing." (2)

FACTUAL BACKGROUND

Finch is a Texas prisoner serving a sentence. He filed a § 2254 application and moved for release on bond, arguing that his mental health had deteriorated due to incarceration and that he had ineffective assistance of counsel and other trial errors.

PROCEDURAL HISTORY

Finch filed a 28 U.S.C. § 2254 application in the United States District Court for the Northern District of Texas and moved for release on bond. The district court denied the motion, and Finch appealed.

DISPOSITION

affirmed

CASES CITED

- Calley v. Callaway, 496 F.2d at 702
- Watson v. Goodwin, 709 F. App'x 311, 312 (5th Cir. 2018)

OPINION

PER CURIAM.

Case: 19-10369 Document: 00515553999 Page: 1 Date Filed: 09/04/2020 United States Court of Appeals for the Fifth Circuit United States Court of Appeals Fifth Circuit FILED September 4, 2020 No. 19-10369 Lyle W. Cayce Summary Calendar Clerk Drake Jordan Finch, Petitioner—Appellant, versus Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, Respondent—Appellee.

Appeal from the United States District Court for the Northern District of Texas USDC No. 2:18-CV-35 Before Higginbotham, Jones, and Costa, Circuit Judges. Per Curiam:* Drake Jordan Finch, Texas prisoner # 01985702, appeals the district court’s denial of his motion for release on bond pending resolution of his 28 U.S.C. § 2254 application. Finch argues that he has suffered a serious * Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

Case: 19-10369 Document: 00515553999 Page: 2 Date Filed: 09/04/2020 No. 19-10369 deterioration of his mental health because he is incarcerated. He also asserts that appellate counsel was ineffective for failing to challenge the lack of probable cause and the sufficiency of the evidence, that the prosecution altered records to show that the victim suffered from a new injury when he had an old injury, that the prosecution violated Texas procedural rules by accusing the victim of lying at trial, and that he had no blood stains on himself or any signs that he had used force.

The respondent asserts that we may lack jurisdiction over this interlocutory appeal but acknowledges that we have exercised jurisdiction over appeals from the denial of motions for release on bond in habeas proceedings. See *Calley v. Callaway*, 496 F.2d at 702; see also *Watson v. Goodwin*, 709 F. App’x 311, 312 (5th Cir. 2018) (applying *Calley* to a § 2254 application).

Accordingly, we exercise jurisdiction over the instant appeal. A prisoner may establish conditions for release on bond pending federal habeas review if he raises “substantial constitutional claims upon which he has a high probability of success” and shows that “extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.” *Calley*, 496 F.2d at 702.

Finch fails to make such a showing. See *Calley*, 496 F.2d at 702. Accordingly, the district court’s order is **AFFIRMED**. 2