

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
ALABAMA

Xavier Jett v. Johnny McNeal

Jett v. McNeal · No. 1:25-cv-542-TFM-B · Decided March 4, 2026

SUMMARY

The United States District Court for the Southern District of Alabama adopted a magistrate judge’s recommendation and dismissed Xavier Jett’s 28 U.S.C. § 2254 habeas petition as a second or successive petition filed without authorization from the Eleventh Circuit. The court denied Jett’s motion for expedited consideration and conditional release, denied a Certificate of Appealability, and certified that any appeal would not be taken in good faith.

CASE DETAILS

COURT	United States District Court for the Southern District of Alabama
WRITING FOR THE COURT	Terry F. Moorer
JURISDICTION	United States District Court for the Southern District of Alabama
DECIDED	March 4, 2026
DOCKET	1:25-cv-542-TFM-B
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner objected to a magistrate judge's report and recommendation recommending dismissal of his 28 U.S.C. § 2254 petition for lack of jurisdiction. The district court conducted de novo review of the objected-to portions, overruled the objections, adopted the recommendation, and dismissed the petition.
STANDARD OF REVIEW	De novo review of the portions of the magistrate judge's report and recommendation to which objections were made.
PRECEDENTIAL VALUE	Unknown; district-court memorandum opinion and order
PARTIES	Xavier Jett v. Johnny McNeal

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court could consider Jett's § 2254 petition when he had not first obtained authorization from the Eleventh Circuit to file a second or successive petition.
2. Whether Jett's assertion of actual innocence or purported newly discovered evidence excused the authorization requirement for a second or successive habeas petition.
3. Whether Jett was entitled to expedited consideration, conditional release, a certificate of appealability, or leave to appeal in forma pauperis.

HOLDINGS

1. A petitioner must first obtain authorization from the appropriate court of appeals before filing a second or successive habeas petition in the district court. Because Jett did not seek authorization from the Eleventh Circuit, the district court was required to dismiss the petition.
2. An assertion of actual innocence or purported newly discovered evidence does not permit a petitioner to bypass the requirement that he first obtain Eleventh Circuit authorization to file a second or successive § 2254 petition.
3. Jett was not entitled to proceed in forma pauperis on appeal because the court certified that any appeal would be without merit and not taken in good faith.

KEY QUOTATIONS

“Regardless of the claims asserted, before a second or successive petition can be filed in district court, the petitioner must first move in the appropriate court of appeals for an order authorizing the district court to consider the second petition.”

“It’s not a question of discretion. Put simply, because Jett did not first seek permission from the Eleventh Circuit, the Court must dismiss the petition as successive.”

“The Court further certifies that any appeal would be without merit and not taken in good faith and therefore, Petitioner is not entitled to proceed in forma pauperis on appeal.”

FACTUAL BACKGROUND

Jett filed a petition for habeas corpus under 28 U.S.C. § 2254 and asserted actual innocence. He acknowledged or relied on a sworn affidavit dated February 13, 2024, and attached a motion to amend a state Rule 32 petition as purported newly discovered evidence. The court noted that Jett had previously filed a habeas petition asserting actual innocence but had not obtained authorization from the Eleventh Circuit to file a second or successive petition.

PROCEDURAL HISTORY

The Magistrate Judge recommended that Jett's § 2254 petition be dismissed because it was a second or successive petition filed without authorization from the Eleventh Circuit. Jett objected, asserting actual

innocence and identifying a 2024 affidavit as newly discovered evidence, and moved for expedited consideration and conditional release. The district court rejected the objections, adopted the report and recommendation, dismissed the petition with prejudice, denied the motion for conditional release, denied a certificate of appealability, and certified that an appeal would not be taken in good faith.

DISPOSITION

dismissed

CASES CITED

- Coppedge v. United States, 369 U.S. 438, 445, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962)
- United States v. Bottoson, 644 F.2d 1174, 1176 (5th Cir. Unit B May 15, 1981) (per curiam)
- Rudolph v. Allen, 666 F.2d 519, 520 (11th Cir. 1982) (per curiam)
- Morris v. Ross, 663 F.2d 1032 (11th Cir. 1981)
- Harris v. Menendez, 817 F.2d 737, 739 (11th Cir. 1987)
- Watson v. Ault, 525 F.2d 886, 892 (5th Cir. 1976)
- Moreland v. Wharton, 899 F.2d 1168, 1170 (11th Cir. 1990) (per curiam)
- Sun v. Forrester, 939 F.2d 924, 925 (11th Cir. 1991)
- Weeks v. Jones, 100 F.3d 124, 127 (11th Cir. 1996)
- Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981) (en banc)
- Clark, 915 F.2d at 639
- Menendez, 817 F.2d at 740 n.5

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION XAVIER JETT, AIS #215862,)) Petitioner,)) vs.) CIV. ACT. NO. 1:25-cv-542-TFM-B) JOHNNY MCNEAL,)) Respondent.) MEMORANDUM OPINION AND ORDER On January 5, 2026, the Magistrate Judge entered a report and recommendation which recommends Petitioner's Motion Under 28 U.S.C. § 2254 be denied and the petition dismissed without prejudice for lack of jurisdiction.

See Doc. 4. Petitioner timely submitted multiple objections along with a motion to expedite his case for conditional release. See Docs. 5, 6, 7, 9, 10. In reviewing Petitioner's objections, he argues the Court does have jurisdiction as he asserts actual innocence. But he fails to address how this case is different than his prior habeas petition – where he also asserted actual innocence.

The successive petition bar does not allow him to relitigate an identical issue without showing how his claim of actual innocence is different than his prior time making that same argument. He argues that a sworn affidavit dated 2/13/24 is the newly discovered evidence and attaches the motion to amend the Rule 32 petition his attorney filed in state court.

However, his objections miss the mark. Whether or not this constitutes new evidence of actual innocence, he still did not seek authorization from the Eleventh Circuit to file a second or successive petition. Regardless of the claims asserted, before a second or successive petition can be filed in district court, the petitioner must first move in the appropriate court of appeals for an order authorizing the district court to consider the second petition.

See 28 U.S.C. § 2244(b)(3)(A). Otherwise, the petition must be dismissed. *Id.* at § 2244(b)(1). It's not a question of discretion. Put simply, because Jett did not first seek permission from the Eleventh Circuit, the Court must dismiss the petition as successive.

Therefore, Petitioner's objections are overruled. After due and proper consideration of all portions of this file deemed relevant to the issues raised, and a de novo determination of those portions of the Report and Recommendation to which objection is made, the Report and Recommendation of the Magistrate Judge is ADOPTED as the opinion of this Court.

Accordingly, it is ORDERED that the Petition for Habeas Corpus brought pursuant to 28 U.S.C. § 2254 (Doc. 1) is DISMISSED with prejudice. Further, Petitioner's "Motion to Expedite and for Immediate Consideration and for Conditional Release Pending Disposition (With Alternative Request for Bond)" (Doc. 6, filed 1/13/26) is DENIED.

The Court further finds that Petitioner is not entitled to a Certificate of Appealability. Additionally, 28 U.S.C. § 1915(a) provides that, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous," *Coppedge v. United States*, 369 U.S. 438, 445, 82 S. Ct.

917, 8 L. Ed. 2d 21 (1962), or "has no substantive merit." *United States v. Bottoson*, 644 F.2d 1174, 1176 (5th Cir. Unit B May 15, 1981) (per curiam);¹ see also *Rudolph v. Allen*, 666 F.2d 519, 520 (11th Cir. 1982) (per curiam); *Morris v. Ross*, 663 F.2d 1032 (11th Cir. 1981). Stated differently: This circuit has defined a frivolous appeal under section 1915(d) as being one "without arguable merit." *Harris v. Menendez*, 817 F.2d 737, 739 (11th Cir.1987) (quoting *Watson v. Ault*, 525 F.2d 886, 892 (5th Cir.1976)). "Arguable means capable of being convincingly argued." *Moreland v. Wharton*, 899 F.2d 1168, 1170 1 In *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir.

1981) (en banc), the Eleventh Circuit adopted as binding precedent all of the decisions of the former Fifth Circuit that were handed down prior to the close of business on September 30, 1981. (11th Cir.1990) (per curiam) (quoting *Menendez*, 817 F.2d at 740 n.5); see *Clark*, 915 F.2d at 639 ("A lawsuit [under section 1915(d)] is frivolous if the 'plaintiff's realistic chances of ultimate success are slight.'" (quoting *Moreland*, 899 F.2d at 1170)).

Sun v. Forrester, 939 F.2d 924, 925 (11th Cir. 1991); see also Weeks v. Jones, 100 F.3d 124, 127 (11th Cir. 1996) (stating that “[f]actual allegations are frivolous for purpose of [28 U.S.C.] § 1915(d) when they are ‘clearly baseless;’ legal theories are frivolous when they are ‘indisputably meritless.’”) (citations omitted).

The Court further certifies that any appeal would be without merit and not taken in good faith and therefore, Petitioner is not entitled to proceed in forma pauperis on appeal. Final Judgment shall issue separately in accordance with Fed. R. Civ. P. 58. DONE and ORDERED this 4th day of March, 2026. /s/Terry F. Moorer TERRY F. MOORER UNITED STATES DISTRICT JUDGE