FILED
United States Court of Appeals
Tenth Circuit

June 24, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

BRYCE FRANKLIN,

Petitioner - Appellant,

v.

ATTORNEY GENERAL FOR THE STATE OF NEW MEXICO; GEORGE STEVENSON,

Respondents - Appellees.

No. 25-2006
(D.C. No. 2:22-CV-00427-MLG-GJF)
(D. N.M.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **FEDERICO**, **BALDOCK**, and **MURPHY**, Circuit Judges.

---

* This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

Bryce Franklin, a state prisoner proceeding pro se,[1] appeals the denial of his habeas corpus petition under 28 U.S.C. § 2241[2] by the U.S. District Court for the District of New Mexico on December 23, 2024. A certificate of appealability (COA) from this court is a jurisdictional prerequisite for Franklin to appeal the § 2241 denial. *Buck v. Davis*, 580 U.S. 100, 115 (2017). For the reasons explained below, we deny his motion for a COA, grant his motion to proceed in forma pauperis, and dismiss this appeal.

I

Franklin contests a prison disciplinary decision from March 24, 2020, where he was accused of forging a prison librarian's signature on an affidavit that he submitted in a separate state court proceeding. Franklin alleges that

[1] Because Franklin proceeds pro se, we construe his pleadings liberally; however, we will not act as his advocate. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

[2] On June 6, 2022, Franklin filed a petition using a form petition for a writ of habeas corpus under 28 U.S.C. § 2254 by a person in state custody. R. I at 5. At the top of the form, however, Franklin crossed out 2254 and wrote 2241. *Id*. "Although the typical route is generally § 2254, a state prisoner may bring a habeas action under § 2241 or § 2254." *Montez v. McKinna*, 208 F.3d 862, 865 (10th Cir. 2000); *see also Leatherwood v. Allbaugh*, 861 F.3d 1034, 1041 (10th Cir. 2017) ("A habeas application under 28 U.S.C. § 2241 generally attacks the execution of a sentence rather than its validity."). Here, Franklin was challenging his discipline – loss of thirty days' good time credit and sixty days' visitation – within the Guadalupe County Correctional Facility. We, therefore, accept this filing as a petition for habeas corpus under 28 U.S.C. § 2241 and proceed with our analysis.

the New Mexico Corrections Department denied him adequate due process before punishing him with the loss of thirty days' good time credit and sixty days' visitation.

Franklin did not apply for a COA, but instead filed a notice of appeal on January 21, 2025. Following a limited remand from this court, the district court denied a COA on January 27, 2025. On March 6, 2025, Franklin filed a motion for a COA in the district court. On March 27, 2025, Franklin filed a motion for leave to proceed in forma pauperis in this court. We construe the March motion for a COA filed with the district court and Franklin's notice of appeal as a request for a COA. *See* 10th Cir. R. 22.1(A).

II

A

"[A] state prisoner must obtain a COA to appeal the denial of a habeas petition, whether such petition was filed pursuant to § 2254 or § 2241, whenever the detention complained of [in the petition] arises out of process issued by a State court." *Montez v. McKinna*, 208 F.3d 862, 867 (10th Cir. 2000) (citation and internal quotation marks omitted). The U.S. Supreme Court has made clear:

> A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal. Federal law requires that he first obtain a COA from a circuit justice or judge . . . Until the prisoner secures a COA, the court of appeals may not rule on the merits of his case.

Buck, 580 U.S. at 115.

Franklin is entitled to a COA only upon making a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Franklin needed to demonstrate that "the issues he seeks to raise on appeal are deserving of further proceedings, subject to a different resolution on appeal, or reasonably debatable among jurists of reason." *Montez*, 208 F.3d at 869. Thus, Franklin needed to show that "reasonable jurists would find the district court's assessment of [his] constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). At the COA stage, we limit our analysis to "a threshold inquiry into the underlying merit of [the] claims, and ask only if the District Court's decision was debatable." *Buck*, 580 U.S. at 116 (citation and internal quotation marks omitted).

B

Franklin alleges that he was denied adequate due process during his disciplinary hearing – where he was accused of forging the signature of a librarian in the detention facility's law library – (1) by being denied the ability to submit written follow-up questions to the librarian, (2) when the hearing officer refused to review allegedly exculpatory video footage, and (3) because insufficient evidence existed to support the misconduct report. Op. Br. at 6–14. On May 14, 2024, the magistrate judge recommended denying the petition and

dismissing the case with prejudice.[3] On December 23, 2024, the district court adopted this Recommendation, denying the habeas petition and dismissing the case with prejudice.

"Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack*, 529 U.S. at 484. "[T]he fact that prisoners retain rights under the Due Process

[3] Franklin filed an objection to the Recommendation on June 5, 2024; however, the district court found that Franklin failed to submit his objection to the Report and Recommendation within the allotted fourteen days. The district court docket indicates that objections were due by May 28, with three additional days given if service was by mail (i.e., objections were then due by May 31, 2024). The district court was also given notice of Franklin's change of address on May 22, 2024. Nevertheless, the district court reviewed Franklin's objection in the interest of justice. Franklin argues on appeal that he did submit a timely objection and that the district court failed to apply the prison mailbox rule. The postage stamp on the filing indicates that it was deposited with the U.S. Postal Service on June 3, 2024, while Franklin "certified" in his filing that he submitted it on May 25, 2024. Franklin must establish timely filing under the mailbox rule by either "(1) alleging and proving that [he] made timely use of the prison's legal mail system if a satisfactory system is available, or (2) if a legal system is not available, then by timely use of the prison's regular mail system in combination with a notarized statement or a declaration under penalty of perjury of the date on which the documents were given to prison authorities and attesting that postage was prepaid." *Price v. Philpot*, 420 F.3d 1158, 1166 (10th Cir. 2005). Regardless, we recognize that there are delays in the prison mail system. Given these circumstances, it is in the interests of justice to consider the merits of the appeal and excuse his tardy objection from the firm waiver rule. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

Clause in no way implies that these rights are not subject to restrictions imposed by the nature of the regime to which they have been lawfully committed." *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). "Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." *Id.*

Nevertheless, prisoners have an interest in retaining their good time credits. Thus, where a prison disciplinary hearing may result in the loss of good time credits, the inmate must have "(1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action." *Superintendent, Massachusetts Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454 (1985). "If there is some evidence to support the disciplinary committee's decision to revoke good time credits, then the requirements of procedural due process have been met." *Mitchell v. Maynard*, 80 F.3d 1433, 1445 (10th Cir. 1996).

Here, the district court determined that the Disciplinary Officer did not violate Franklin's due process rights at the hearing by denying him the ability to ask follow-up written questions or review the video footage of January 24, 2020. As noted by the district court, the Disciplinary Officer provided as evidence: (1) the suspect affidavit was submitted by Franklin in the separate

state court proceeding; (2) the suspect affidavit was purported to be from the librarian, Michael Fralick, but was in Franklin's handwriting and spelled Fralick's last name incorrectly (i.e., "Michael frailic"); and (3) the librarian denied writing the affidavit and prepared a misconduct report on January 24, 2020. R. I at 366–67.

Moreover, because the suspect affidavit was only discovered on January 24, 2020, there was no need to review security footage of that day, as it was not the day the suspect affidavit was drafted. Indeed, the signatory date on the suspect affidavit was November 27, 2019. The record does not indicate that Franklin requested to review security footage from November 27, 2019. *But see Howard v. U.S. Bureau Of Prisons*, 487 F.3d 808, 815 (10th Cir. 2007) (holding that the disciplinary hearing officer violated appellant's due process right to present documentary evidence in his defense by refusing to produce and review a videotape potentially showing that he acted in self-defense). Thus, the district court determined that there was sufficient circumstantial evidence to support the "some evidence" standard to sustain a guilty determination.

Reasonable jurists could not debate the district court's denial of these claims, and we thus deny a COA.

III

Accordingly, we **DISMISS** this appeal. Franklin's application to proceed on appeal in forma pauperis is **GRANTED**.

Entered for the Court

Richard E.N. Federico
Circuit Judge