

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 30, 2026

Christopher M. Wolpert
Clerk of Court

BARBARA FRANTZ,

Petitioner - Appellant,

v.

DONA HOOK,

Respondent - Appellee.

No. 26-3135
(D.C. No. 5:26-cv-03090-JWL)
(D. Kan.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **PHILLIPS, KELLY**, and **FEDERICO**, Circuit Judges.

Barbara Frantz, proceeding pro se, filed a 28 U.S.C. § 2254 petition challenging her incarceration in Kansas's Topeka Correctional Facility.¹ Citing a failure to exhaust state remedies, the district court dismissed Frantz's petition without prejudice. On appeal, Frantz seeks a certificate of appealability (COA) and leave to proceed in forma pauperis (IFP). Exercising jurisdiction under

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ Because Frantz proceeds pro se, we liberally construe her filings, but we do not serve as her advocate. *See Davis v. Clifford*, 825 F.3d 1131, 1134 n.1 (10th Cir. 2016).

28 U.S.C. §§ 1291 and 2253, we grant leave to proceed IFP but deny a COA and dismiss this matter.

BACKGROUND

In July 2018, a Kansas jury convicted Frantz of first-degree premeditated murder. *State v. Frantz*, 521 P.3d 1113, 1121 (Kan. 2022). She was sentenced to life in prison without the possibility of parole for twenty-five years. *Id.* at 1125. In late 2022, the Kansas Supreme Court affirmed her conviction. *Id.* at 1142.

Soon after, Frantz moved for state habeas relief from her conviction. The state district court denied her motion in February 2025, and Frantz appealed. That appeal is pending.

Frantz also filed a federal habeas petition under 28 U.S.C. § 2241 in the United States District Court for the District of Kansas. She later chose to convert that petition to one seeking relief under § 2254. In her revised petition, Frantz alleged several constitutional violations relating to her arrest, pretrial detention, trial, and postconviction proceedings. The district court concluded that though Frantz had exhausted the available state remedies for some of these claims, others were unexhausted. So the court ordered Frantz to show cause as to why it should not dismiss her petition without prejudice to allow her to exhaust the unexhausted claims. In response, Frantz argued that her state proceedings were plagued by undue delays and that exhaustion would be futile. Finding that there was no undue delay or other reason to excuse the exhaustion

requirement, the district court dismissed the petition without prejudice and denied a COA. Frantz timely appealed, seeking a COA and to proceed IFP.

DISCUSSION

As a habeas petitioner in state custody, Frantz must obtain a COA to appeal the dismissal of her § 2254 petition. *See* § 2253(c)(1)(A). To obtain a COA, she must show “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.” *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). But because the district court dismissed her petition on exhaustion grounds, Frantz must also show “that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* We need not address the constitutional question if reasonable jurists would not debate the procedural one. *See id.* at 485. And here, reasonable jurists would not debate that Frantz has failed to exhaust state remedies for at least some of her claims.

“A state prisoner generally must exhaust available state-court remedies before a federal court can consider a habeas corpus petition.” *Fontenot v. Crow*, 4 F.4th 982, 1018 (10th Cir. 2021) (quoting *Bland v. Sirmons*, 459 F.3d 999, 1011 (10th Cir. 2006)); *see* § 2254(b)(1)(A). A claim is exhausted when it has been “fairly presented” to the state court. *Bland*, 459 F.3d at 1011 (quotation omitted). This means that the prisoner “has raised the substance of the federal claim in state court.” *Id.* (quotation omitted). The prisoner bears the burden of

showing that all her claims are exhausted. *Miranda v. Cooper*, 967 F.2d 392, 398 (10th Cir. 1992).

Frantz’s federal habeas petition contains at least eight claims: (1) newly discovered evidence of a confession led to violations of her due process and equal protection rights; (2) prosecutors in her case knowingly presented perjured testimony; (3) her arrest warrant was illegal; (4) the admission of police bodycam footage at her trial violated her confrontation rights; (5) she was provided ineffective assistance of counsel at trial and in postconviction proceedings; (6) the state courts violated her due process and equal protection rights; (7) she was involuntarily administered antipsychotic drugs while detained pretrial; and (8) she was physically and sexually assaulted while detained pretrial.

Some of these claims are exhausted. For example, the Kansas Supreme Court considered Frantz’s challenge to her arrest warrant during her direct appeal. *Frantz*, 521 P.3d at 1141. That court also heard her argument that the State secured her conviction through perjured testimony. *Id.* at 1139–40. But some of Frantz’s claims—such as her ineffective-assistance claims—are unexhausted. Indeed, Frantz noted in her federal petition that these claims are part of the ongoing appeal in her state habeas case.

When a habeas petition, like Frantz’s, contains both exhausted and unexhausted claims, a federal court usually must dismiss it without prejudice. *Rhines v. Weber*, 544 U.S. 269, 274 (2005). Doing so gives the prisoner the

opportunity to return to state court to exhaust all claims. *Id.* But this rule has exceptions. *Fontenot*, 4 F.4th at 1019. For example, if the federal court determines that the unexhausted claims “would now be procedurally barred in state court,” the federal court can “address the properly exhausted claims.” *Id.* (cleaned up). The exhaustion requirement may also be excused if presenting the unexhausted claims in state court would be futile because an “inordinate delay” makes the state process “ineffective.” *Hill v. Reynolds*, 942 F.2d 1494, 1496, 1497 (10th Cir. 1991); *see Fontenot*, 4 F.4th at 1020.

On appeal, Frantz argues that these exceptions should excuse the exhaustion requirement here. We disagree. As the district court concluded, several of Frantz’s unexhausted claims would not be procedurally barred in state court. Again, her ineffective-assistance claims are part of the ongoing appeal in her state habeas case. Nor has the State caused an inordinate delay in deciding that case. Her appeal was docketed in January 2026 and has been pending for about nine months. This is not yet the kind of delay that makes a state process presumptively ineffective. *Cf. Harris v. Champion*, 15 F.3d 1538, 1556 (10th Cir. 1994) (concluding that “delay in adjudicating a direct criminal appeal beyond two years . . . gives rise to a presumption that the state appellate process is ineffective”).

Because Frantz has not exhausted all her claims or demonstrated that an exception to the exhaustion rule applies, the district court was correct to dismiss her habeas petition without prejudice. Reasonable jurists “could not

conclude either that the district court erred in dismissing the petition or that [Frantz] should be allowed to proceed further.” *Slack*, 529 U.S. at 484.

CONCLUSION

We grant Frantz’s IFP motion, but we deny her application for a COA and dismiss this appeal.

Entered for the Court

Gregory A. Phillips
Circuit Judge