

EXHIBIT A

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

August 25, 2017

Mr. David J. Bradley
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

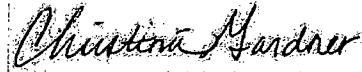
No. 17-20199 John Bender v. Lorie Davis, Director
USDC No. 4:16-CV-2740

Dear Mr. Bradley,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Christina A. Gardner, Deputy Clerk
504-310-7684

cc w/encl:

Mr. John Phillip Bender

**No proIN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-20199
USDC No. 4:16-CV-2740



A True Copy
Certified order issued Aug 25, 2017

JOHN PHILLIP BENDER,

Jule W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit
Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeals from the United States District Court for the
Southern District of Texas, Houston

ORDER:

John Phillip Bender, Texas prisoner # 1600287, moves for a certificate of appealability (COA) to appeal (i) the district court's dismissal of his 28 U.S.C. § 2254 application challenging his convictions for aggregated theft and aggregated misapplication of fiduciary property and (ii) the district court's denial of his Rule 60(b) motion for reconsideration of the judgment dismissing his § 2254 application. The district court dismissed Bender's § 2254 application as time barred and denied his Rule 60(b) motion without reasons.

In his COA motion concerning the district court's dismissal of his § 2254 application, Bender asserts that (i) the district court abused its discretion in dismissing his § 2254 petition sua sponte; (ii) the one-year limitations period

No. 17-20199

set forth in 28 U.S.C. § 2244(d) was tolled while his disbarment proceedings were pending before the Texas Board of Disciplinary Appeals; (iii) the one-year limitations period should be equitably tolled; and (iv) he is actually innocent and that his claim of innocence provides an exception to the time bar of § 2244(d). Additionally, Bender argues the merits of the claims he raised in the district court. In his COA motion concerning the district court's denial of his Rule 60(b) motion, Bender argues that the district court lacked jurisdiction to dismiss his § 2254 application as time barred.

In order to obtain a COA, Bender must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). To satisfy this requirement, Bender must show that reasonable jurists could debate whether his motion should have been resolved differently or that the issues presented were adequate to deserve encouragement to proceed further. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *Slack*, 529 U.S. at 484. Bender has not met this standard.

Accordingly, Bender's motion for a COA as to his § 2254 application is DENIED. Additionally, Bender's motion for a COA as to his Rule 60(b) motion is DENIED. Finally, Bender's motion for release pending appeal is likewise DENIED.


STEPHEN A. HIGGINSON
UNITED STATES CIRCUIT JUDGE

EXHIBIT B

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

December 11, 2017

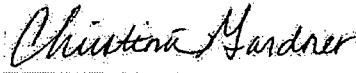
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 17-20199 John Bender v. Lorie Davis, Director
USDC No. 4:16-CV-2740

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: Christina A. Gardner, Deputy Clerk
504-310-7684

Mr. John Phillip Bender

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-20199

JOHN PHILLIP BENDER,

Petitioner - Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

Appeals from the United States District Court
for the Southern District of Texas

Before DENNIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:

A member of this panel previously denied appellant's motion for certificate of appealability and motion for release pending appeal. The panel has considered appellant's motion for reconsideration of the motion for certificate of appealability only. IT IS ORDERED that the motion is DENIED.

EXHIBIT C

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

**LYLE W. CAYCE
CLERK**

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

January 05, 2018

#01600287
Mr. John Phillip Bender
CID Scott Prison
6999 Retrieve CR 290
Angleton, TX 77515-0000

No. 17-20199 John Bender v. Lorie Davis, Director
USDC No. 4:16-CV-2740

Dear Mr. Bender,

We received your December 20, 2017 letter requesting that your Petition for Rehearing En Banc originally received on October 31, 2017, together with the motion to file the rehearing in excess pages, be processed now. We take no action on this request. When you chose to replace the deficient Rehearing En Banc with the compliant "Redrawn Motion for Reconsideration of Single Judge Order" that motion was presented to the Court for consideration accordingly. The Court having already denied reconsideration, will not consider a subsequent request for En Banc review of the same order that denied your motion for certificate of appealability (COA). This appeal is now closed and no further orders will be entered.

Sincerely,

LYLE W. CAYCE, Clerk

By:

Donna L. Mendez, Deputy Clerk
504-310-7677

**Additional material
from this filing is
available in the
Clerk's Office.**