

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT



No. 17-30120
USDC No. 2:16-CV-2384

A True Copy
Certified order issued Oct 26, 2017

GUY BOUDREAUX, JR.,

Judy W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Petitioner-Appellant

v.

HOWARD PRINCE, WARDEN, ELAYN HUNT CORRECTIONAL CENTER,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana

ORDER:

Guy Boudreux, Jr., Louisiana prisoner # 576362, was convicted of 47 counts of possessing child pornography and four counts of attempted possession of child pornography and was sentenced to serve 10 years in prison. Now, he moves this court for a certificate of appealability (COA) to appeal the district court's denial of his Federal Rule of Civil Procedure 60(b) motion. He argues that his 28 U.S.C. § 2254 habeas corpus petition was timely filed and that its merits should be considered because he is actually innocent.

Because Boudreux sought to use Rule 60(b) to alter the original § 2254 judgment, a COA is required to appeal the denial of his Rule 60(b) motion. *See* 28 U.S.C. § 2253(c)(1); *Ochoa Canales v. Quarterman*, 507 F.3d 884, 888 (5th Cir. 2007). In denying Boudreux's motion, the district court did not rely solely

No. 17-30120

upon the alleged untimeliness of his objections to the magistrate judge's report but also examined the merits of his claim that his § 2254 petition was timely. Further, even if Boudreux's petition for certiorari to the Louisiana Supreme Court in December of 2011 was considered timely, his § 2254 petition to the district court would still be untimely.

To obtain a COA, one "must make a substantial showing of the denial of a constitutional right," which includes a showing that "the [motion] should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 483-484 (2000) (internal quotation marks and citation omitted). Because Boudreux has not made this showing, his COA motion is DENIED.

Signed: 10-26-2017

/s/ Catharina Haynes
CATHARINA HAYNES
UNITED STATES CIRCUIT JUDGE