

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

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

GUY BOUDREAUX, JR.,

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 Boudreaux, 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 Boudreaux 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 Boudreaux's motion, the district court did not rely solely

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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 Boudreaux'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 Boudreaux has not made this showing, his COA motion is DENIED.

Signed: 10-26-2017

\_\_\_\_\_/s/ Catharina Haynes\_\_\_\_\_  
CATHARINA HAYNES  
UNITED STATES CIRCUIT JUDGE