

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT



No. 17-50626

A True Copy
Certified order issued Feb 27, 2018

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

STEPHEN ANTHONY MARQUEZ,

Petitioner-Appellant

v.

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

Respondent-Appellee

Appeal from the United States District Court
for the Western District of Texas

ORDER:

Stephen Anthony Marquez, Texas prisoner # 01869138, moves this court for a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 application wherein he sought to challenge his conviction of three counts of aggravated sexual assault of a child younger than 14 years of age. He argues that his trial counsel was ineffective for failing to investigate the reliability of statements Marquez made to medical providers and to obtain an expert psychiatric witness regarding his mental condition when he made the statements; failing to obtain his medical records and the business records affidavit and to investigate them prior to trial; and failing to object to the trial court's order that statements contained within the medical record were not hearsay. He also argues that his appellate counsel was ineffective for failing

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to challenge the admission of Marquez's medical records into evidence on the ground that the admission was an abuse of discretion by the trial court; failing to raise a prosecutorial misconduct claim related to the State's use of the medical records; failing to argue that the reliance on the business records affidavit violated Marquez's rights under the Confrontation Clause; failing to argue ineffective assistance of trial counsel related to trial preparation and research; failing to argue that the State violated attorney-client privilege by soliciting testimony from Marquez's sex offender therapist; and failing to challenge the admissibility of the statements contained in the medical records.

This court may issue a COA only if Marquez has "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where the district court has denied the claims on the merits, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" or that "the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks and citation omitted).

Marquez has not made the requisite showing. Consequently his motion for a COA is denied. *Id.*

/s/ Leslie H. Southwick
LESLIE H. SOUTHWICK
UNITED STATES CIRCUIT JUDGE