

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10460



A True Copy
Certified order issued Apr 03, 2018

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

ELI VERNON, III, also known as Eli Mims,

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 Northern District of Texas

ORDER:

Eli Vernon, III, Texas prisoner # 1863499, moves for a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 habeas corpus application challenging his conviction for evading arrest or detention with a motor vehicle. Vernon seeks to appeal the denial of his claim based on the right to a jury drawn from a fair cross-section of the community and a claim of ineffective assistance of counsel based on the failure to object to the venire.

A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a district court rejects claims on the merits, the applicant must "demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473,

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484 (2000). Vernon has not made the requisite showing. His request for a COA is DENIED.

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

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Appeal from the United States District Court
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ON PETITION FOR REHEARING EN BANC

Before DENNIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:

- (✓) Treating the Petition for Rehearing En Banc as a Motion for Reconsideration, the Motion for Reconsideration is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.
- () Treating the Petition for Rehearing En Banc as a Motion for Reconsideration, the Motion for Reconsideration is DENIED. The court

having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE