Appendix A. ***Darrell Kennedy v. Rusty Washburn, Warden*****, No. 18-6108 (6th Cir. Feb. 19, 2019)**

No. 18-6108

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DARRELL KENNEDY,)
)
Petitioner-Appellant,)
)
v.) ORDER
)
RUSTY WASHBURN, Warden,)
)
Respondent-Appellee.)

Darrell Kennedy, a pro se Tennessee prisoner, appeals the district court's judgment dismissing his petition for a writ of habeas corpus under 28 U.S.C. § 2254. The court construes Kennedy's notice of appeal as an application for a certificate of appealability (COA). *See* Fed. R. App. P. 22(b)(2). Kennedy also moves the court to proceed in forma pauperis on appeal.

In 1997, a jury convicted Kennedy of two counts of theft and one count of rape. The trial court sentenced Kennedy to a total term of forty-one years in prison. The Tennessee Court of Criminal Appeals vacated one of Kennedy's theft convictions but otherwise affirmed Kennedy's convictions and sentence. *See State v. Kennedy*, 7 S.W.3d 58 (Tenn. Crim. App. 1999), *perm. app. denied* (Tenn. July 19, 1999). Kennedy did not file a petition for a writ of certiorari in the United States Supreme Court. In May 2014, Kennedy filed a petition in the trial court for post-conviction DNA testing. The trial court denied Kennedy's petition, and the Tennessee Court of Criminal Appeals affirmed. *See Kennedy v. State*, No. W2015-00148-CCA-R3-PC, 2016 WL 768909 (Tenn. Crim. App. Feb. 10, 2016), *perm. app. denied.* (Tenn. June 23, 2016).

On July 7, 2017, Kennedy filed a § 2254 habeas petition in the district court, claiming that: (1) the trial court violated his rights under the Confrontation Clause by allowing the prosecution's

DNA expert to testify about samples that he did not personally prepare; (2) the Tennessee Court of Criminal Appeals' resolution of his claim that the trial court erred in admitting evidence of other acts was contrary to *Huddleston v. United States*, 485 U.S. 681 (1988); and (3) the Tennessee Court of Criminal Appeals' decision affirming the trial court's denial of his post-conviction petition for DNA testing was contrary to *California v. Trombetta*, 467 U.S. 479 (1984). The district court dismissed Kennedy's petition, concluding that it was barred by the one-year statute of limitations in 28 U.S.C. § 2244(d)(1)(A) and that Kennedy was not entitled to equitable tolling. The district court declined to issue a COA.

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 denies a habeas claim on procedural grounds, the court may issue a COA only if the applicant shows "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Under 28 U.S.C. § 2244(d)(1)(A), a state prisoner must file his habeas petition within one year of "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." Kennedy's first two claims concern alleged constitutional violations during his trial. Kennedy's convictions became final on July 19, 1999, when the Tennessee Supreme Court denied him permission to appeal the decision of the Tennessee Court of Criminal Appeals affirming his convictions and sentence. The § 2244(d)(1)(A) statute of limitations started running ninety days later, on October 18, 1999, when Kennedy's time to file a petition for a writ of certiorari in the United States Supreme Court ran out, *see Bronaugh v. Ohio*, 235 F.3d 280, 283 (6th Cir. 2000), and expired one year later, on October 18, 2000. Kennedy did not file his § 2254 habeas petition until July 2017, almost seventeen years after the statute of limitations on these two claims expired. His 2014 petition for DNA testing did not revive the already-expired statute of limitations. *See Searcy v. Carter*, 246 F.3d 515, 516, 519-20 (6th Cir.

2001). Accordingly, reasonable jurists would not debate the district court's conclusion that Kennedy's first two claims were untimely under § 2244(d)(1)(A).

Kennedy's third claim concerns an alleged error in the Tennessee Court of Appeals' resolution of his petition for DNA testing. The Tennessee Supreme Court denied Kennedy permission to appeal that decision on June 23, 2016. The § 2244(d)(1)(A) statute of limitations started running the next day, *see Lawrence v. Florida*, 549 U.S. 327, 332 (2007), and expired one year later, on June 26, 2017. As stated, Kennedy filed his habeas petition on July 7, 2017, eleven days after the § 2244(d)(1)(A) statute of limitations on this claim expired. Accordingly, reasonable jurists would not debate the district court's conclusion that Kennedy's third claim was also untimely under § 2244(d)(1)(A). And even if the district court's procedural ruling on this claim were debatable, reasonable jurists would not debate whether Kennedy stated a meritorious claim for habeas relief because a claim of constitutional error in a post-conviction proceeding is not cognizable under § 2254. *See Slack*, 529 U.S. at 484; *Dufresne v. Palmer*, 876 F.3d 248, 254 (6th Cir. 2017); *Cress v. Palmer*, 484 F.3d 844, 853 (6th Cir. 2007).

A prisoner can obtain equitable tolling of the statute of limitations upon making "a credible showing of actual innocence." *Souter v. Jones*, 395 F.3d 577, 599 (6th Cir. 2005). This "requires petitioner to support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence that was not presented at trial." *Cleveland v. Bradshaw*, 693 F.3d 626, 633 (6th Cir. 2012) (quoting *Schlup v. Delo*, 513 U.S. 298, 324 (1995)). The petitioner must demonstrate that in light of the new evidence it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. *See id.*

Here, although Kennedy claimed equitable tolling based on actual innocence, he did not submit any newly available evidence in support of his claim. Consequently, reasonable jurists would not debate the district court's conclusion that Kennedy was not entitled to equitable tolling.

Accordingly, the court **DENIES** Kennedy's COA application and **DENIES** as moot his motion to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix B "*Darrell R. Kennedy v. Blair Leibach*, No. 2:17-cv-02551-TLP-tmp, U.S. Dist. Ct., W.D. Tenn. (October 25, 2018) (ECF No. 18)"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DARRELL R. KENNEDY,	)	
	)	
Petitioner,	)	
	)	No. 2:17-cv-02551-TLP-tmp
	)	
v.	)	
	)	
BLAIR LEIBACH,	)	
	)	
Respondent.	)	

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

On July 7, 2017, Petitioner Darrell R. Kennedy, Tennessee Department of Correction ("TDOC") prisoner number 110997, an inmate at the Turner Trousdale Correctional Center ("TTCC") in Hartsville, Tennessee, placed a pro se petition pursuant to 28 U.S.C. § 2254 in the prison mail system. (ECF No. 1 at PageID 16.) On September 20, 2018, the Court entered Judgment Denying and Dismissing the Petition. (ECF No. 12.) Kennedy appealed. (ECF No. 15.)

Before the Court is Petitioner's Motion for Relief from Judgment pursuant to Fed. R. Civ. P. 60(b)(3) and (b)(6). (ECF No. 14.) For the reasons stated below, the Motion is DENIED.

Fed. R. Civ. P. 60(b) provides as follows:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

"A motion under Rule 60(b) must be made within a reasonable time and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1).

"As a prerequisite to relief under Rule 60(b), a party must establish that the facts of its case are within one of the enumerated reasons contained in Rule 60(b) that warrant relief from judgment." *Johnson v. Unknown Dellatifa*, 357 F.3d 539, 543 (6th Cir. 2004) (quoting *Lewis v. Alexander*, 987 F.2d 392, 396 (6th Cir. 1993)). "A Rule 60(b) motion may be denied if it is merely an attempt to relitigate previously decided issues." *McNeil v. United States*, 113 F. App'x 95, 97–98 (6th Cir. 2004). "Rule 60(b) does not allow a defeated litigant a second chance to convince the court to rule in his or her favor by presenting new explanations, legal theories, or proof." *Jinks v. AlliedSignal, Inc.*, 250 F.3d 381, 384 (6th Cir. 2001).

The Sixth Circuit has emphasized that relief pursuant to Rule 60(b)(6) is rarely appropriate:

> [R]elief under Rule 60(b) is "circumscribed by public policy favoring finality of judgments and termination of litigation." *Waifersong Ltd. v. Classic Music Vending*, 976 F.2d 290, 292 (6th Cir. 1992). This is especially true in an application of subsection (6) of Rule 60(b), which applies "only in exceptional or extraordinary circumstances which are not addressed by the first five numbered clauses of the Rule." *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990); *see also Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863–64 . . . (1988). This is because "almost every conceivable ground for relief is covered" under the other subsections of Rule 60(b). *Olle*, 910 F.2d at 365; *see*

> *also Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 294 (6th Cir. 1989). Consequently, courts must apply Rule 60(b)(6) relief only in "unusual and extreme situations where principles of equity *mandate* relief." *Olle*, 910 F.2d at 365.

Blue Diamond Coal Co. v. Trustees of the UMWA Combined Benefit Fund, 249 F. 3d 519, 524 (6th Cir. 2001) (emphasis in original).

Petitioner contends that Respondent's miscalculation of the date his statute of limitation expired constitutes fraud or a misrepresentation. (ECF No. 14 at PageID 1921.) The Court did not rely on Respondent's calculations. The Court calculated the expiration date in the order of dismissal. (ECF No. 12 at PageID 1914–15.) Furthermore, Petitioner's Motion for Reconsideration attempts to relitigate previously decided issues and does not persuade the Court that any aspect of its September 18, 2018, order was wrongly decided. Petitioner's Motion for Relief from Judgment pursuant to Fed. Rule 60(b)(3) and (b)(6) is DENIED.

SO ORDERED, this 25th day of October, 2018.

s/ Thomas L. Parker
THOMAS L. PARKER
UNITED STATES DISTRICT JUDGE

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U.S. District Court

Western District of Tennessee

Notice of Electronic Filing
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Case Name:	Kennedy v. Leibach
Case Number:	2:17-cv-02551-TLP-tmp
Filer:	
WARNING: CASE CLOSED on 09/20/2018	
Document Number:	18

Docket Text:
ORDER Denying [14] Motion for Relief from Judgment. Signed by Judge Thomas L. Parker on 10/25/18. (jgb)

2:17-cv-02551-TLP-tmp Notice has been electronically mailed to:
Meredith Wood Bowen meredith.bowen@ag.tn.gov
2:17-cv-02551-TLP-tmp Notice will not be electronically mailed to:
Darrell R. Kennedy
110997
Turner Trousdale Correctional Center
140 Macon Way
Hartsville, TN 37074

The following document(s) are associated with this transaction:

Appendix C "*Darrell R. Kennedy v. Blair Leibach*, No. 2:17-cv-02551-TLP-tmp, U.S. Dist. Ct., W.D. Tenn. (September 20, 2018) (ECF No. 13)"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DARRELL R. KENNEDY,	)	
	)	
Petitioner,	)	
	)	No. 2:17-cv-02551-TLP-tmp
v.	)	
	)	
BLAIR LEIBACH,	)	
	)	
Respondent.	)	

JUDGMENT

JUDGMENT BY COURT. This action came before the Court on Pro Se Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus on July 31, 2017. (ECF No. 1.) In accordance with the Order Granting Respondent's Motion to Dismiss, Order of Dismissal, Order Denying Certificate of Appealability, Order Certifying Appeal Not Taken in Good Faith and, Order Denying Leave to Proceed in Forma Pauperis on Appeal (ECF No. 12), entered by the Court,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this action is **DISMISSED.**

APPROVED:

s/Thomas L. Parker
THOMAS L. PARKER
UNITED STATES DISTRICT JUDGE

September 20, 2018
Date

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U.S. District Court

Western District of Tennessee

Notice of Electronic Filing
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Case Name:	Kennedy v. Leibach
Case Number:	2:17-cv-02551-TLP-tmp
Filer:	
WARNING: CASE CLOSED on 09/20/2018	
Document Number:	13

Docket Text:
JUDGMENT. Signed by Judge Thomas L. Parker on 09/19/2018. (Parker, Thomas)

2:17-cv-02551-TLP-tmp Notice has been electronically mailed to:
Meredith Wood Bowen meredith.bowen@ag.tn.gov
2:17-cv-02551-TLP-tmp Notice will not be electronically mailed to:
Darrell R. Kennedy
110997
Turner Trousdale Correctional Center
140 Macon Way
Hartsville, TN 37074

The following document(s) are associated with this transaction:

Appendix D "*Darrell R. Kennedy v. Blair Leibach*, No. 2:17-cv-02551-TLP-tmp, U.S. Dist. Ct., W.D. Tenn. (September 18, 2018) (ECF No. 12)"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DARRELL R. KENNEDY,	)	
	)	
Petitioner,	)	
	)	No. 2:17-cv-02551-TLP-tmp
v.	)	
	)	
BLAIR LEIBACH,	)	
	)	
Respondent.	)	

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS, ORDER OF DISMISSAL, ORDER DENYING CERTIFICATE OF APPEALABILITY, ORDER CERTIFYING APPEAL NOT TAKEN IN GOOD FAITH AND, ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL

Petitioner Darrell R. Kennedy, Tennessee Department of Correction ("TDOC") prisoner number 110997, an inmate at the Turner Trousdale Correctional Center ("TTCC") in Hartsville, Tennessee, placed a pro se petition under 28 U.S.C. § 2254 in the prison mail system on July 7, 2017. (ECF No. 1 at PageID 16.) Respondent moves to dismiss the petition as untimely. (ECF No. 10.) For the reasons stated below, the Motion to Dismiss is GRANTED and the Petition is DISMISSED.

I. STATE COURT PROCEDURAL HISTORY

The State of Tennessee charged Petitioner Kennedy with two counts of theft of property over $1,000. (ECF No. 9-1 at PageID 71–73.) Then, the State charged him with one count of aggravated rape. (ECF No. 9-2 at PageID 298–99.) Later, a jury trial began in Shelby County Criminal Court on all three charges. The jury convicted Petitioner on all counts, and the Court sentenced him to serve 41 years in prison. (ECF No. 9-2 at PageID 316, 343–45.) The

Tennessee Court of Criminal Appeals ("TCCA") affirmed Petitioner's convictions and sentences for rape and one count of theft. *State v. Kennedy*, 7 S.W.3d 58, 60 (Tenn. Crim. App. Feb. 17, 199), *perm. app. denied* (Tenn. July 19, 1999). But the TCCA vacated and dismissed the second theft conviction. (*Id.*) Petitioner filed no petition for post-conviction relief.

On May 14, 2014, Petitioner petitioned for DNA analysis under the Post-Conviction DNA Analysis Act of 2001. (ECF No. 9-16 at PageID 1550–58.) The court appointed counsel to represent him. (ECF No. 9-16 at PageID 1565.) The post-conviction court denied the petition. (ECF No. 9-16 at PageID 1597–1600.) The Tennessee Court of Criminal Appeals affirmed. *Kennedy v. State*, No. W2015-00148-CCA-R3-PC, 2016 WL 768909 (Tenn. Crim. App. Feb. 10, 2016), *perm. app. denied* (June 23, 2016).

II. PETITIONER'S FEDERAL HABEAS CLAIMS

In this § 2254 petition, Kennedy raises three issues: 1) the trial court's admission of expert testimony about the results of a DNA analysis violated Petitioner's right to confrontation; 2) the trial court erred by admitting testimony relating to a vehicle matching the description of Petitioner's vehicle at the site of the crimes during the week before the crimes; and 3) the post-conviction court erred by denying his request for further DNA testing. (ECF No. 1 at PageID 5–6, 9.) Respondent contends that the petition is time-barred. (ECF No. 10 at PageID 1904.)

III. ANALYSIS

Under 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), federal courts have authority to issue habeas corpus relief for persons in state custody. A federal court may grant habeas relief to a state prisoner "only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). The Court looks to 28 U.S.C. § 2244(d) for the timing requirements for

bringing a claim under 28 U.S.C. § 2254. (*See* Rule 3(c), Rules Governing Section 2254 Cases.)

Section 2244(d) states:

> (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall begin to run from the latest of–
>
> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
>
> (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
>
> (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; and
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
>
> (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d).

State convictions ordinarily become "final" under § 2244(d)(1)(A) when the time expires for petitioning for a writ of certiorari from a decision of the highest state court on direct appeal. *Bronaugh v. Ohio*, 235 F.3d 280, 283 (6th Cir. 2000). Kennedy's conviction became final on October 17, 1999, the last date for petitioning for a writ of certiorari with the United States Supreme Court, at which time the running of the limitations period started. And the time

expired one year later, on October 18, 2000.[1] Kennedy did not place this petition in the prison mail system until July 7, 2017, and it is time-barred.

Petitioner Kennedy's petition for DNA analysis, had no effect on the one-year limitations period. When that petition was filed, the limitations period had already expired. *Vroman v. Brigano*, 346 F.3d 598, 602 (6th Cir. 2003) ("The tolling provision does not . . . 'revive' the limitations period (*i.e.*, restart the clock at zero); it can only serve to pause a clock that has not yet fully run. Once the limitations period is expired, collateral petitions can no longer serve to avoid a statute of limitations.") (internal quotation marks and citation omitted); *Owens v. Stine*, 27 F. App'x 351, 353 (6th Cir. 2001) ("A state court post-conviction motion that is filed following the expiration of the limitations period cannot toll that period because there is no period remaining to be tolled.").

"[T]he doctrine of equitable tolling allows federal courts to toll a statute of limitations when a litigant's failure to meet a legally mandated deadline unavoidably arose from circumstances beyond that litigant's control." *Keenan v. Bagley*, 400 F.3d 417, 421 (6th Cir. 2005) (internal quotation marks omitted). The § 2254 limitations period is potentially subject to equitable tolling. *Holland v. Florida*, 560 U.S. 631, 645–49 (2010). Yet "the doctrine of equitable tolling is used sparingly by the federal courts." *Robertson v. Simpson*, 624 F.3d 781, 784 (6th Cir. 2010); *see also Vroman*, 346 F.3d at 604 (same); *Jurado v. Burt*, 337 F.3d 638, 642 (6th Cir. 2003) (same). "The party seeking equitable tolling bears the burden of proving he is entitled to it." *Robertson*, 624 F.3d at 784. A habeas petitioner is entitled to equitable tolling "only if he shows '(1) that he has been pursuing his rights diligently, and (2) that some

[1] Because the conviction became final on October 17, 1999, a Sunday, Petitioner perhaps had until October 18, 2000 to file a timely petition, though this makes no difference as Petitioner filed his petition nearly 17 years later. Fed. R. App. P. 26(a)(1)(C).

extraordinary circumstance stood in his way' and prevented timely filing." *Holland*, 560 U.S. at 649 (quoting *Pace*, 544 U.S. at 418).

Petitioner Kennedy does not allege circumstances justifying the application of equitable tolling. Petitioner admits that his petition is untimely but contends that his claim of actual innocence entitles him to equitable tolling. (ECF No. 1 at PageID 13,23.) Petitioner fails to explain his delay in filing this habeas petition after his conviction became final. His claim of actual innocence does not arise from newly discovered evidence. He fails to establish any circumstances beyond his control. To the contrary, he shows a marked lack of diligence. Petitioner alleges no concrete fact or circumstance that prevented him from filing a habeas petition under 28 U.S.C. § 2254 within one year of the Tennessee Supreme Court's denial of his application for permission to appeal.

"[A] claim of actual innocence is not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits." *Herrera v. Collins*, 506 U.S. 390, 404 (1993). The actual innocence exception is narrow in scope and requires proof of factual innocence, not just legal insufficiency. *Bousley v. United States*, 523 U.S. 614, 623 (1998) ("It is important to note . . . that 'actual innocence' means factual innocence, not mere legal insufficiency."). Here, Petitioner is asserting a freestanding actual innocence claim, that is, a claim of actual innocence which does not excuse the procedural default of another claim. Although the Supreme Court has suggested that it may recognize freestanding actual innocence claims in capital cases, *see Herrera v. Collins*, 506 U.S. at 417, it has not done so in non-capital cases such as this one. As a result, equitable tolling is not appropriate here. This petition is barred by the statute of limitations.

Respondent's motion to dismiss the petition as time-barred is GRANTED. (ECF No. 10.) The petition is DISMISSED WITH PREJUDICE. Judgment will be entered for Respondent.

IV. APPELLATE ISSUES

There is no absolute entitlement to appeal a district court's denial of a § 2254 petition. *Miller-El v. Cockrell*, 537 U.S. 322, 335 (2003); *Bradley v. Birkett*, 156 F. App'x 771, 772 (6th Cir. 2005). The Court should issue or deny a certificate of appealability ("COA") when it enters a final order adverse to a § 2254 petitioner. Rule 11, Rules Governing Section 2254 Cases in the United States District Courts. A petitioner may not take an appeal unless a circuit or district judge issues a COA. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1).

A COA may issue only if the petitioner has made a substantial showing of the denial of a constitutional right, and the COA must reveal the specific issue or issues that satisfy the required showing. 28 U.S.C. §§ 2253(c)(2) & 3. A petitioner makes a "substantial showing" when the petitioner proves that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El*, 537 U.S. at 336 (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)); *Henley v. Bell*, 308 F. App'x 989, 990 (6th Cir. 2009) (per curiam) (same).

A COA does not require a showing that the appeal will succeed. *Miller-El*, 537 U.S. at 337; *Caldwell v. Lewis*, 414 F. App'x 809, 814–15 (6th Cir. 2011) (same). Courts should not issue a COA as a matter of course. *Bradley*, 156 F. App'x at 773 (quoting *Slack*, 537 U.S. at 337).

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Western District of Tennessee

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Case Name: Kennedy v. Leibach

Case Number: 2:17-cv-02551-TLP-tmp

Filer:

WARNING: CASE CLOSED on 09/18/2018

Document Number: 12

Docket Text:
ORDER Granting [10] Motion to Dismiss. Signed by Judge Thomas L. Parker on 09/18/18. (jgb)

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