

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-50850



A True Copy
Certified order issued May 03, 2018

JUAN FRANCISCO MEDINA ORTIZ,


Clerk, U.S. Court of Appeals, Fifth Circuit
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

O R D E R:

Juan Francisco Medina Ortiz, Texas prisoner # 2027814, was convicted by a jury of one count of injury to a child and two counts of aggravated assault with a deadly weapon. He now seeks a certificate of appealability (COA) to appeal the district court's dismissal without prejudice of his 28 U.S.C. § 2254 application for failure to exhaust state court remedies. Medina Ortiz also claims that the district court should have stayed the proceedings and placed his § 2254 application in abeyance while he exhausted his state court remedies.

Medina Ortiz did not ask the district court to stay the proceedings. Accordingly, it is an issue raised for the first time in his COA motion, and this court will not consider it. *See Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003).

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In order to obtain a COA to appeal the denial of a § 2254 petition, Medina Ortiz must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327. When the district court denies relief on procedural grounds, “a COA should issue when the prisoner shows, at least, 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). Medina Ortiz has not made the requisite showing. *See id.* Consequently, his motion for a COA is DENIED.

/s/ Priscilla R. Owen

PRISCILLA R. OWEN
UNITED STATES CIRCUIT JUDGE