

IN THE UNITED STATES SUPREME COURT

JESSE RAM ROSE,
TDCJ-ID NO.1802171,
Petitioner,

v.

LORIE DAVIS,
Director, Texas Department
Criminal Justice
Respondent

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RE: USDC5 NO. 17-50334

MOTION FOR WRIT OF CERTIORARI
FILED OUT OF TIME

TO THE HONORABLE JUSTICES OF THE COURT:

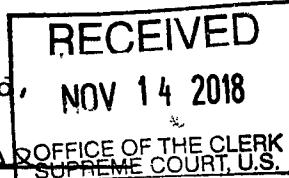
Now comes JESSE RAY ROSE, Petitioner, Pro-Se, and respectfully moves this Honorable Court for a Writ of Certiorari; filed out-of-Time.

PRO SE PLEADING

Petitioner is not an attorney and is proceeding Pro-Se without the assistance of counsel. As an unskilled pro se litigant, Petitioner has to the best of his abilities complied with the rules and guidelines of the Courts. However, due to a transfer to a different unit which was unforeseen, which resulted in the separation of Petitioner from his property and legal work, combined with an immediate lockdown after transfer, Petitioner's Writ of Certiorari was filed eleven days late. Petitioner's Writ of Certiorari was then returned with instructions to refile the Petition with a Motion for out of time Certiorari.

Because Petitioner's transfer was unforeseeable, and resulted in the separation of his property and legal work, the recovery of which was further compounded by an institutional lockdown, Petitioner respectfully requests that this Court accept his out of time Writ of Certiorari.

Respectfully Submitted, NOV 14 2018
Jesse Ray Rose
1 JESSE RAY ROSE



IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-50334



A True Copy
Certified order issued Apr 05, 2018

JESSE RAY ROSE,

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

Petitioner-Appellant,

versus

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:

Jesse Rose, Texas prisoner #1802171, seeks a certificate of appealability ("COA") to appeal the dismissal and denial of his 28 U.S.C. § 2254 application challenging his conviction of aggravated robbery. The district court found that all of Rose's claims were procedurally barred except his challenge to the effective assistance of counsel for his attorney's failing to submit the perpetrator's mask for additional DNA testing. On that claim, the court found that Rose

No. 17-50334

was not entitled to federal habeas relief.

In his COA motion, Rose challenges the district court's application of the procedural bar. He raises the substantive claims that were dismissed as procedurally barred and also asserts that trial counsel was ineffective for failing to submit the mask for additional DNA testing.

To obtain a COA, Rose must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). Where the district court denies habeas relief on procedural grounds, the applicant must demonstrate that reasonable jurists would find it debatable whether the application states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484. Where the district court denies relief on the merits, an applicant must show that reasonable jurists "would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* An applicant satisfies the COA 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 v. Cockrell*, 537 U.S. 322, 327 (2003).

Rose has not met the standard. Accordingly, his motion for a COA is DENIED. His motion for leave to proceed *in forma pauperis* on appeal is also DENIED.

/s/ Jerry E. Smith

JERRY E. SMITH
United States Circuit Judge

**Additional material
from this filing is
available in the
Clerk's Office.**