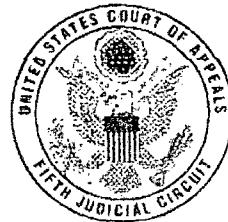


IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-11599



ARTHUR LUTHER MCKINNEY,

Petitioner-Appellant

A True Copy
Certified order issued Sep 05, 2019

Judge W. Cayce

Clerk, U.S. Court of Appeals, Fifth

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION; CHARLES SIRINGI, Warden,

Respondents-Appellees

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

O R D E R:

Arthur Luther McKinney, Texas prisoner # 2016392, was convicted in a prison disciplinary proceeding of using vulgar language. He seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 habeas application, arguing that prison officials violated his due process rights at the disciplinary hearing.

To obtain a COA, a movant 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 (2000). "A [movant] 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

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adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

While his motion for a COA was pending before the court, McKinney was released from custody. An appeal would therefore be moot and this court would lack jurisdiction, so McKinney has failed to make the requisite showing for issuance of a COA. *See Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *Bailey v. Southerland*, 821 F.2d 277, 278-79 (5th Cir. 1987). Accordingly, his motion for a COA is DENIED.

Patrick E. Higginbotham

PATRICK E. HIGGINBOTHAM
UNITED STATES CIRCUIT JUDGE