

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-31021

TIFFANY R. BYRD,

Petitioner-Appellant

v.

FREDERICK BOUTTE, Warden, Louisiana Correctional Institute for Women,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana

O R D E R:

Tiffany R. Byrd, Louisiana prisoner # 591225, seeks a certificate of appealability (COA) to appeal the dismissal with prejudice of her 28 U.S.C. § 2254 petition challenging her conviction and sentence of 17 years of imprisonment at hard labor for attempted second-degree murder. The district court dismissed the petition as barred by the one-year limitations period. See 28 U.S.C. § 2244(d)(1). Byrd claims the benefit of equitable tolling.

A COA will issue if Byrd she makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); see *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). She meets this standard if she shows “that jurists of reason could disagree with the district court’s resolution of her constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Buck v. Davis*, 137 S. Ct. 759, 773

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(2017) (internal quotation marks and citation omitted). Because the district court rendered a “procedural ruling barring relief,” Byrd must demonstrate the ruling to be “debatable among jurists of reason” in order for her appeal to “deserve encouragement to proceed further.” *Id.* at 777 (internal quotation marks and citation omitted); see *Jimenez v. Quarterman*, 555 U.S. 113, 118 n.3 (2009).

Byrd argues that an August 2016 flood that caused her evacuation from her prison constituted an extraordinary circumstance that prevented her from timely filing for federal habeas relief. Whether the flood satisfied the extraordinary circumstance prong of the equitable tolling doctrine is immaterial, given that reasonable jurists could not agree with Byrd that she satisfied the diligence prong of the doctrine in order to overcome the procedural bar created by her post-limitations-period filing. See *Buck*, 137 S. Ct. at 777; see also *Menominee Indian Tribe of Wis. v. United States*, 136 S. Ct. 750, 755-56 (2016); *Fisher v. Johnson*, 174 F.3d 710, 715 (5th Cir. 1999). Byrd offers no reason why she waited over nine months after her conviction became final before seeking state postconviction relief and no reason why she squandered the 65 days that remained on her federal filing period after she received her legal documents following her return to her original prison. Consequently, a COA is DENIED.



A True Copy
Certified order issued Jul 23, 2019

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


JAMES C. HO
UNITED STATES CIRCUIT JUDGE