

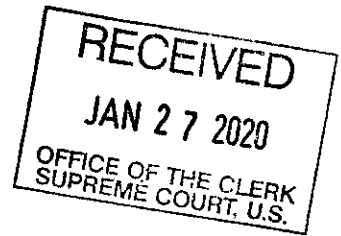
UNITED STATES SUPREME COURT

MARC TRACE WYATT

V.

USDC NO: 1:17-CV-122

LORIE DAVIS



MOTION FOR THE EXTENSION OF TIME

_Comes now Marc Trace Wyatt and files this his motion for the extension of time to file his writ of Citurari. Petitioner has been waiting for the Fifth Circuit to rule on his motion for a re-hearing, but his motion was ruled as untimely. Petitioner can show this court that the untimely filing was not a fault of the Petitioner's. The untimely filing was cause by the institution in which Petitioner is incarcerated.

Petitioner seeks to file a writ of Citurari in appeal of his current conviction. He seeks this extension in the intrest of justice and not to harrass the state's counsel.

A handwritten signature in dark ink, appearing to read "Marc Trace Wyatt". The signature is written in a cursive, somewhat stylized script.

MARC TRACE WYATT

#1853251

ESTELLE UNIT

264 FM 3478

HUNTSVILLE, TEXAS

77320

CERTIFICATE OF SERVICE

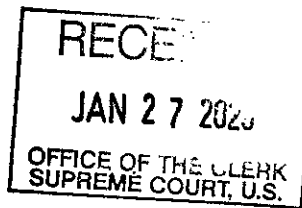
I, Marc Trace Wyatt, do hereby certify that a true and correct copy of the forgoing motion for the extension of time has been mailed to the State's attorney at the following address:

GREG GOSPER

P.O.BOX 12548 CAPITAL STATION

AUSTIN, TEXAS 78711

on this the 14th day of january 2020 by placing the same in the indigen t mail system used at the Estelle unit.



MARC TRACE WYATT

#1853251

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

No. 19-50395

MARC WYATT,

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:

Marc Wyatt, Texas prisoner # 1853251, moves for a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 application challenging his conviction for criminal mischief resulting in pecuniary loss of at least \$20,000 but not exceeding \$100,000. Wyatt argues that he was denied the timely appointment of counsel, he was denied the right to self-representation, the prosecution failed to preserve exculpatory evidence, the evidence was insufficient to support his conviction, and the trial court erred in determining the restitution amount. He further argues that trial counsel was ineffective for failing to call an expert witness and for failing to object to the jury's consideration of parole laws at sentencing.

No. 19-50395

Wyatt does not renew claims raised in the district court challenging trial counsel's effectiveness for failing to inform him about an offer of probation, failing to request a jury instruction on a lesser-included offense, failing to request a pretrial hearing, failing to request independent forensics testing of the evidence, failing to properly investigate, failing to object to evidence that was not in the record during the sentencing phase, failing to investigate an alibi, failing to object to evidence of an insurance payment, failing to investigate Wyatt's girlfriend, failing to challenge the amount of loss, and failing to call Lilith Jane Whitehead as a witness. He also fails to reurge any claims challenging the effective assistance of appellate counsel. Nor does he renew claims that the search and seizure of his property was unconstitutional, the prosecution knowingly used false evidence, the prosecution failed to maintain the chain of custody on evidence, evidence was altered, the prosecution failed to disclose exculpatory evidence, the prosecution used improper hypotheticals during voir dire, the prosecution failed to disclose a bargain with a witness, he was actually innocent, and he was denied due process during the state habeas proceedings. Accordingly, these issues are abandoned. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

In order to obtain a COA, Wyatt must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). 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." *Slack*, 529 U.S. at 484. 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

No. 19-50395

presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Wyatt has not met this standard.

Accordingly, his motion for a COA is DENIED.

/s/Jennifer Walker Elrod
JENNIFER WALKER ELROD
UNITED STATES CIRCUIT JUDGE



A True Copy
Certified order issued Nov 26, 2019

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