

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 19-40461

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SCOTT LESLIE CARMELL,

Petitioner - Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

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

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Before JONES, HIGGINSON, and OLDHAM, Circuit Judges.

PER CURIAM:

A member of this panel previously denied appellant's motions for a certificate of appealability and to proceed in forma pauperis. The panel has considered appellant's motion for reconsideration of the denial of the motion for a certificate of appealability. IT IS ORDERED that the motion is DENIED.

*United States Court of Appeals*  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

**LYLE W. CAYCE  
CLERK**

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

January 03, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 19-40461 Scott Carmell v. Lorie Davis, Director  
USDC No. 4:13-CV-681

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Angelique B. Tardie

By: Angelique B. Tardie, Deputy Clerk  
504-310-7715

Mr. Scott Leslie Carmell  
Mr. Edward Larry Marshall  
Ms. Susan Frances San Miguel

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT



No. 19-40461

A True Copy  
Certified order issued Nov 25, 2019

SCOTT LESLIE CARMELL,

*Jyle W. Cayce*  
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 Eastern District of Texas

---

O R D E R:

Scott Leslie Carmell, Texas prisoner # 777548, was convicted of 15 counts of sexual offenses, including eight counts of indecency with a child, five counts of sexual assault, and two counts of aggravated sexual assault. He was denied relief under 28 U.S.C. § 2254. Carmell filed in the district court a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(4), asserting that the judgment denying his § 2254 application was void. The district court denied the motion as an unauthorized successive § 2254 application. Carmell now moves for a certificate of appealability (COA) to appeal the denial of his Rule 60(b)(4) motion. He also moves for leave to proceed in forma pauperis (IFP) on appeal.

Carmell argues that the district court erred in its determination that his Rule 60(b)(4) motion was a successive § 2254 application. He asserts that the

state trial court lacked jurisdiction, and he reasons that, if the original criminal judgment was void, any judgment based on the original criminal judgment is also void.

A COA is required for Carmell to appeal the denial of his Rule 60 motion. *See* 28 U.S.C. § 2253(c)(1); *Ochoa Canales v. Quarterman*, 507 F.3d 884, 888 (5th Cir. 2007). A COA may issue only if the movant “has made a substantial showing of the denial of a constitutional right.” § 2253(c)(2); *see Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). This standard requires a movant to establish that reasonable jurists would find the decision to deny relief debatable or wrong, or that the issues he presents deserve encouragement to proceed further. *Slack*, 529 U.S. at 484. Because he seeks a COA to appeal the denial of his Rule 60(b) motion, Carmell must show that reasonable jurists could debate whether the district court’s denial of his Rule 60(b) motion was an abuse of discretion. *See Hernandez v. Thaler*, 630 F.3d 420, 428 (5th Cir. 2011).

Carmell has not made the showing required to obtain a COA. *See Slack*, 529 U.S. at 484. Accordingly, his COA application is DENIED. Carmell’s IFP motion is DENIED.



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ANDREW S. OLDHAM  
UNITED STATES CIRCUIT JUDGE

***United States Court of Appeals***

**FIFTH CIRCUIT  
OFFICE OF THE CLERK**

**LYLE W. CAYCE  
CLERK**

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

November 25, 2019

Mr. David O'Toole  
Eastern District of Texas, Sherman  
101 E. Pecan Street  
Federal Building  
Room 216  
Sherman, TX 75090-0000

No. 19-40461 Scott Carmell v. Lorie Davis, Director  
USDC No. 4:13-CV-681

Dear Mr. O'Toole,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Angelique B. Tardie

By: Angelique B. Tardie, Deputy Clerk  
504-310-7715

cc w/encl:

Mr. Scott Leslie Carmell  
Mr. Edward Larry Marshall  
Ms. Susan Frances San Miguel