

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-40461

SCOTT LESLIE CARMELL,

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

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

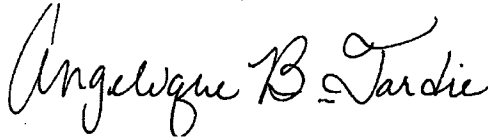
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

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

A handwritten signature in black ink, reading "Angelique B. Tardie". The signature is written in a cursive, flowing style.

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

SCOTT LESLIE CARMELL,

A True Copy
Certified order issued Nov 25, 2019

Steph W. Cayer
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.



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

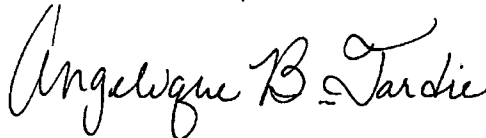
No. 19-40461 Scott Carmell v. Lorie Davis, Director
USDC No. 4:13-CV-681

Dear Mr. O'Toole,

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

Sincerely,

LYLE W. CAYCE, Clerk



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