

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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SUPREME COURT U.S.

No. 19-40633



A True Copy
Certified order issued Dec 13, 2019

Jule W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit
Petitioner-Appellant,

JAMES EARVIN SANDERS,

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

ORDER:

James Earvin Sanders, Texas prisoner # 1579328, moves for a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2254 application challenging his conviction and sentence for two counts of aggravated robbery. The district court determined that the § 2254 application was time barred and that Sanders was not entitled to tolling of the limitations period. Sanders argues that the limitations period commenced either (1) the date on which an impediment to filing created by state action was removed, or (2) the date on which the facts supporting the claim could have been discovered through due diligence. He also argues for equitable tolling.

To obtain a COA, Sanders must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court

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denies relief based on procedural grounds, the applicant satisfies this standard by showing that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Sanders has not made the requisite showing.

Accordingly, IT IS ORDERED that Sanders’s motion for a COA is DENIED. His motion to proceed in forma pauperis on appeal is also DENIED.



DON R. WILLETT
UNITED STATES CIRCUIT JUDGE