

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

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MICHAEL DAVIS – PETITIONER

VS.

STATE OF LOUISIANA, -- RESPONDENT

A MOTION TO DIRECT THE CLERK
TO FILE A PETITION FOR A WRIT OF CERTIORARI OUT-OF TIME

TO THE HONORABLE NEIL GORSUCH, CIRCUIT JUSTICE FOR THE FIFTH
CIRCUIT COURT OF APPEAL.


NOW INTO COURT, comes MICHAEL DAVIS, pro se (movant), who respectfully moves the Court for an Order directed towards the Clerk of Court, the Honorable Scott S. Harris, ordering same: (1) to file the petition for certiorari of Michael Davis described and attached hereto; and (2) give movant proper notice that the petition has been filed, for the reasons set forth below.

On May 21, 2019, movant submitted his Petition for Certiorari to the prison classification officer for mailing to this court. Exhibit A. While it is true that the date of the lower court judgment or order denying an application for COA was February 19, 2019, an exercise of the Court's discretion to permit a late filing should be made under the circumstances. Without prior notice, the prison electrical power was shut down early on the

morning of Friday May 17, 2019, and while the power was restored late Sunday night, on May 19th, the computer servers in the law library, which contained the writ of certiorari files which had been prepared for Mr. Davis, were not restored until Monday May 20th at approximately 10:30 a.m.. The Criminal litigation coordinator in the law library immediately printed the files, had the necessary copies made, prepared the materials for mailing, and delivered same to Mr. Davis at 6:40 p.m., at the Main Prison's West Yard Pine 1 unit. Mr. Davis placed the petition and service copies in the hands of the Classification officer the next morning for legal mail May 21, 2019. The Offender Funds Withdrawal form notes in the upper right corner the mail was sent out May 22, 2019. This information may be verified through the Prison Administration Office or Legal Programs Department. The prison phone number is 225-342-6740.

The Clerk's rejection notice states "When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition." Movants submits under the above circumstances the court may waive the rule, *see Durham v. U.S.* 91 S.Ct. 858, 859, 401 U.S. 481 (U.S. Or. 1971). Otherwise movant would argue the time limitation is not jurisdictional, *Heflin v. United States*, 358 U.S. 415, n. 7, 79 S.Ct. 451, 453, 3 L.Ed.2d 407 (1959), and does not bar the Court's exercise of discretion to consider the merits of movant's petition for certiorari.

Respectfully submitted on this 5 day of July, 2019.


Michael Davis
D.O.C. #287020, Hickory 3
Louisiana State Penitentiary
Angola, Louisiana 70712

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-30660



A True Copy
Certified order issued Feb 19, 2019

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

MICHAEL DAVIS,

Petitioner-Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent-Appellee

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

O R D E R:

Michael Davis, Louisiana prisoner # 287020, who stands convicted of armed robbery, seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 petition on the merits. He argues that the trial court erred in admitting evidence of a murder at his armed robbery trial; that the trial court erred in allowing his confession into evidence; that counsel was ineffective for failing to file a motion to quash based on expired statutory time limitations; and that he was denied a full and fair record for appeal. To the extent he fails to challenge the district court's determination that his claims of state law violations were not cognizable under § 2254, those claims have been abandoned. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999); *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

A COA may be issued only if Davis makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong” or that “the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks and citation omitted).

Davis has not made the showing required for a COA. *See id.* Accordingly, his motion for a COA is DENIED. His motion for leave to proceed in forma pauperis on appeal is also DENIED.

/s/Edith H. Jones
EDITH H. JONES
UNITED STATES CIRCUIT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**