

Appendix(B)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT



No. 18-41126

A True Copy
Certified order issued Mar 05, 2020

MICHAEL DEAN PERRY,

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

ORDER:

Michael Dean Perry, Texas prisoner # 1838827, seeks a certificate of appealability (COA) to appeal the district court's denial of his Federal Rule of Civil Procedure 60(b) motion. He is also seeking to proceed in forma pauperis (IFP) on appeal and requests appointment of counsel. His requests for leave to file a supplemental brief and for leave to supplement his COA are GRANTED. His request for leave to supplement the record is DENIED.

In his Rule 60(b) motion, Perry attacked "some defect in the integrity of the federal habeas proceedings," so he requires a COA in order to appeal the denial of the motion. *See Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005). To obtain a COA, he must show, "at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a

See COA No. 17-41010

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). Because Perry seeks a COA to appeal the denial of a Rule 60(b) motion, he must show that “a jurist of reason could conclude that the district court’s denial of [his] motion was an abuse of discretion.” *Hernandez v. Thaler*, 630 F.3d 420, 428 (5th Cir. 2011).

Although Perry claimed that his Rule 60(b) motion was based on a mistake, newly discovered evidence, fraud, or other reasons justifying relief, he has not identified anything that qualifies for those bases. Perry’s arguments are primarily directed at the district court’s dismissal of his underlying 28 U.S.C. § 2254 application, which is not currently before this court. His argument that his Rule 60(b) motion should have been granted based on his showing of actual innocence relies on the same claims that were raised and rejected by the district court in his § 2254 application.

Perry has not made the requisite showing. His motions for a COA, leave to proceed IFP on appeal, and appointment of counsel are DENIED.

/s/ Leslie H. Southwick
LESLIE H. SOUTHWICK
UNITED STATES CIRCUIT JUDGE

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O R D E R:

On March 18, 2020, the clerk denied appellant's "Motion for Extension of Time with Brief in Support" treated as a motion for extension of time to file a motion for reconsideration. Upon consideration of appellant's motion for reconsideration, IT IS ORDERED that the motion is DENIED.

/s/ Leslie H. Southwick
LESLIE H. SOUTHWICK
UNITED STATES CIRCUIT JUDGE