

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-20484



EVATRUS DERJUAN MOSS,

A True Copy
Certified order issued Jun 22, 2020

Applicant

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

v.

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

Respondent

On an Application for Certificate of Appealability

ORDER:

Evatrus Derjuan Moss, Texas prisoner # 722174, has applied for a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2254 petition as barred by the one-year statute of limitations in 28 U.S.C. § 2244(d). Without a COA, Moss cannot appeal. *See id.* § 2253(c)(1). Section "2253(c)(1)'s plain terms . . . establish that 'until a COA has been issued federal courts of appeals lack jurisdiction to rule on the merits of appeals from habeas petitioners.'" *Gonzalez v. Thaler*, 565 U.S. 134, 142 (2012) (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003)).

To obtain a COA, he must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A prisoner may satisfy this standard by showing that jurists of reason could disagree with the district court's denial of his constitutional claims or that jurists could conclude the

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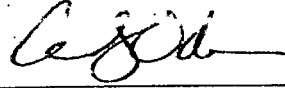
issues presented deserve encouragement to proceed further. *Miller-El*, 537 U.S. at 327. Where, as here, the district court denies relief on procedural grounds, a COA should issue only when the prisoner “shows, at least, that jurists of reason would find it debatable whether the petition states a valid 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).

Moss requests a COA on two questions: (1) whether the statute of limitations should be equitably tolled because state law prevented him from raising ineffective assistance claims on direct appeal, and he was denied appointment of counsel in his state habeas proceeding in which he had to raise his ineffective assistance claims; and (2) whether the state courts’ denial of his request for appointment of counsel in his habeas proceeding and denial of his habeas application were contrary to *Martinez v. Ryan*, 566 U.S. 1 (2012), and *Trevino v. Thaler*, 569 U.S. 413 (2013).

For the first time in his COA application, Moss asserts that like the petitioner in *Floyd v. Vannoy*, 887 F.3d 214, 234 (5th Cir. 2018), *superseded on denial of rehearing en banc*, *Floyd v. Vannoy*, 894 F.3d 143 (5th Cir.), *cert. denied*, 139 S. Ct. 573 (2018), he should be granted an exception to the statute of limitations. This court does not have jurisdiction to consider arguments raised for the first time in a COA application. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018), *cert. denied*, 140 S. Ct. 859 (2020). As to his other arguments, Moss has not made the required showing concerning the district court’s dismissal of his § 2254 petition as untimely.

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Accordingly, Moss's COA application is DENIED.

A handwritten signature in black ink, appearing to read 'A. S. Oldham', is written above a horizontal line.

ANDREW S. OLDHAM
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

ENTERED
July 22, 2019

David J. Bradley, Clerk

Evatrus Derjuan Moss,

Petitioner,

versus

Lorie Davis,

Respondent.

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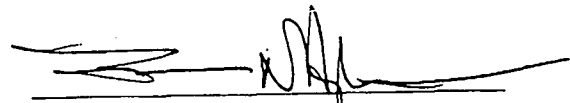
Civil Action H-15-3468

Order Granting Pauper Status on Appeal

Evatrus Derjuan Moss moves to proceed as a pauper on appeal. Moss' inmate trust fund account sheet shows that he does not have the funds to pay the appellate filing fee.

Moss' motion is granted. (23)

Signed at Houston, Texas, on July 22, 2019.



Lynn N. Hughes
United States District Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS
United States District Court
Southern District of Texas

ENTERED

June 12, 2019

David J. Bradley, Clerk

Evatrus Derjuan Moss,
Petitioner,

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v.

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Civil Action H-18-3468

§

Lorie Davis,
Respondent.

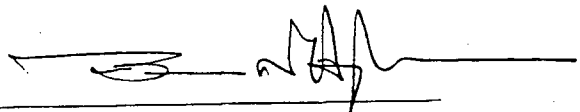
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Final Judgment

Evatrus Derjuan Moss's petition for writ of habeas corpus is dismissed with prejudice. A certificate of appealability will not issue.

Signed June 10 2019, at Houston, Texas.



Lynn N. Hughes
United States District Judge