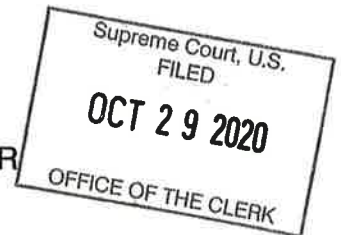


No. 20-6658

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Michael Brent Brown — PETITIONER
(Your Name)



vs.

Bobby Lumpkin, Director — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Brent Brown
(Your Name)

777 FM 3497
(Address)

Woodville, TEXAS 75990
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Petitioner wishes to challenge the decisions of the United States Court of Appeals for the Fifth Circuit in cause no. 19-40720 and the United States District Court for the Eastern District of Texas, Beaumont Division in cause no. 1:19-cv-54, and seeks the dismissal as time barred of his federal application for writ of habeas corpus pursuant to 28 U.S.C. § 2254, where the courts denied relief and review on procedural grounds.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the 1-year limitation is in question.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- Michael Brent Brown v. Lorie Davis, Director, NO. 1:19-cv-54
U.S. District Court for the Eastern District of Texas, Beaumont
Division. Judgment entered July 15, 2019.
- Michael Brent Brown v. Lorie Davis, Director, NO. 19-40720
U.S. Court of Appeals for the Fifth Circuit, Judgment
entered August 4, 2020.

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APPENDIX B MEMORANDUM ORDER AND OPINION FROM U.S. DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS, BEAUMONT DIVISION

APPENDIX C ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS

APPENDIX D-LETTER from STATE COUNSEL FOR OFFENDERS showing that
PETITIONER WAS DILIGENTLY PURSUING ASSISTANCE IN PREPARING
AND FILING HIS STATE HABEAS CORPUS SEVERAL MONTHS BEFORE 10-3-17 DEADLINE.

APPENDIX E - CORRESPONDENCE FROM ORANGE COUNTY DISTRICT CLERK IN AN ATTEMPT
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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Holland v. Florida, 130 S.Ct. 2549, 2560,

- 5

Slack v. McDaniel, 529 U.S. 473, 483-84 (2000),

- 5

Wilson v. Sellers, 138 S.Ct. 1188

- 5

STATUTES AND RULES

Antiterrorism and Effective Death Penalty Act of 1996

- 3 -

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MAY 27, 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 4, 2020, and a copy of the order denying rehearing appears at Appendix A-3.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Antiterrorism and Effective Death Penalty Act of 1996

STATEMENT OF THE CASE

ON DECEMBER 11, 2014, following an "open plea", PETITIONER WAS SENTENCED TO LIFE FOR POSSESSION OF A CONTROLLED SUBSTANCE OF 1.89 GRAMS OF AMPHETIMINE CONTAINED IN EIGHT (8) 10 MILLIGRAMS ADDERALL TABLETS. ON DECEMBER 1, 2015 IN CAUSE NO. 01-15-00042-CR HIS APPEAL WAS AFFIRMED. PETITION FOR DISCRETIONARY REVIEW WAS REFUSED ON MAY 4, 2016. A WRIT OF CERTIORARI FILED WITH THE U.S. SUPREME COURT WAS DENIED ON OCTOBER 3, 2016. PETITIONER SOUGHT LEGAL ADVISE AND ASSISTANCE FROM THE STATE COUNSEL FOR OFFENDERS ON A NUMBER OF OCCASIONS WITH RESPONSES ON MARCH 1, 2017 AND MARCH 8, 2017 AND OCCASIONS OF OCTOBER 24, 2017 AND A PHONE CONVERSATION ON NOVEMBER 16, 2017. ON JULY 13, 2017 PETITIONER CONTACTED ATTORNEY MALACHI DAWES ASKING FOR ASSISTANCE AND AGAIN ON OCTOBER 2, 2017. ON OCTOBER 16, 2017 ATTORNEY DAWES REQUESTED THAT PETITIONER FORWARD PETITIONER'S HABEAS CORPUS FOR REVIEW. ON NOVEMBER 29, 2017 PETITIONER'S HABEAS WAS RETURNED. ON DECEMBER 26, 2017 PETITIONER PLACED HIS STATE HABEAS CORPUS IN THE PRISON MAIL AND IT WAS FILED ON JANUARY 2, 2018 WITH THE ORANGE COUNTY DISTRICT CLERK.

PETITIONER FILED HIS FEDERAL HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254 ON FEBRUARY 4, 2019. ALL MEMORANDUMS, OPINIONS AND ORDERS ARE ENCLOSED HEREIN.

REASONS FOR GRANTING THE PETITION

Petitioner has provided REASONS for his delay in filing his state habeas corpus and documentation to the U.S. District Court and the U.S. Appeals Court, Fifth Circuit showing he diligently pursued his ~~its~~ preparation for filing his state writ of habeas corpus and the extraordinary circumstances that occurred preventing him from his timely filing.

In Holland v. Florida, 130 S. Ct. 2549, 2560 it is stated that Holland defines "diligence" for these purposes as "reasonable diligence, and not maximum feasible diligence". The statutory limitations period is subject to equitable tolling in appropriate cases. If not for the delay of the Orange County District Clerk's not notifying Petitioner of the disposition of the motion for the dash cam video until after his 1-year limitation had expired, Petitioner could have well filed his state habeas corpus before October 3, 2017. Because of the Clerk's untimely delay, Petitioner sought legal assistance and advice from two different attorneys that resulted in further delays not intended by this Petitioner.

Petitioner feels that being time barred in these proceedings is denying him of federal constitutional rights. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000) where it states that Petitioner's need not establish that he should prevail on the merits, but demonstrate the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed. Petitioner feels he has done that in his federal habeas corpus.

It is the hope to have his federal habeas petition reviewed and the numerous constitutional violations, which are presented therein, be given a "look through" as stated by this Court in Wilson v. Sellers, 138 S. Ct. 1188 where it is stated that a "look through" could be warranted in cases that "resulted in a decision that was contrary to, or involved an unreasonable application of clearly established federal laws".

In Holland v. Florida, supra this Court further stated that the AEDPA seeks to eliminate delays in the federal habeas review process, but seeks to do so without undermining basic habeas corpus principles, and without losing sight of the fact that the writ of habeas corpus plays a vital role in protecting constitutional rights and does not seek to end possible delays at all cost.

The orders of time barred by the United States District Court for the Eastern District of Texas, Beaumont Division and the order from the United States Court of Appeals for the Fifth Circuit should be reversed and Petitioner should be granted equitable tolling allowing the issuance of a certificate of appealability.

Petitioner acknowledges that exceptional circumstance existed and warrants the application of equitable tolling.

PETITIONER RESPECTFUL, PRAYS THAT THIS WRIT OF CERTIORARI BE GRANTED IN ALL THINGS.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Brent Brown

Date: 10-29-20

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-40720



A True Copy
Certified order issued May 27, 2020

Steph W. Cuyca
Clerk, U.S. Court of Appeals, Fifth Circuit

MICHAEL BRENT BROWN,

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 Brent Brown, Texas prisoner # 01978080, pleaded guilty to possession of a controlled substance, pleaded true to two enhancements, and was sentenced to life imprisonment in 2014. Brown seeks a certificate of appealability (COA) to appeal the dismissal as time barred of his application for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254.

To obtain a COA, a prisoner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Where the district court denies habeas relief on procedural grounds, as in this case, the movant must demonstrate that reasonable jurists would find it debatable whether the application states a

Appendix A-1.

No. 19-40720

valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *See Slack*, 529 U.S. at 484.

Brown argues that there was a state-created impediment caused by a two-month delay in the state court's ruling on his motion for production of a video, and he asserts that he was diligent in his attempt to file his state habeas corpus application, if not for this two-month delay. He also argues that equitable tolling is warranted. He states the he did not fully understand the strict nature of the one-year limitations period.

Because Brown has not shown that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling," his motion for a COA is DENIED. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

A handwritten signature in black ink, appearing to read "SKD", followed by a long horizontal flourish.

STUART KYLE DUNCAN
UNITED STATES CIRCUIT JUDGE

United States Court of Appeals
for the Fifth Circuit

No. 19-40720

MICHAEL BRENT BROWN,

Petitioner-Appellant,

versus

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 WILLETT, HO, and DUNCAN, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that appellant's motion for leave to file out of time,
the motion for reconsideration is GRANTED.

A member of this panel previously denied appellant's motion for a
certificate of appealability. The panel has considered appellant's motion for
reconsideration.

IT IS FURTHER ORDERED that the motion is DENIED.

Appendix A-3.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

MICHAEL BRENT BROWN,

Petitioner,

versus

DIRECTOR, TDCJ-CID,

Respondent.

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CIVIL ACTION NO. 1:19-CV-54

**MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner Michael Brent Brown, an inmate confined at the Polunsky Unit, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Keith F. GIBLIN, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends that the petition be dismissed as barred by limitations.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings and all available evidence. Petitioner filed objections to the Report and Recommendation. The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes petitioner's objections are without merit.

Petitioner did not diligently pursue his rights and has failed to adequately explain the excessive delay in this case. Petitioner contends that an impediment to filing his state application for writ of habeas corpus existed. Petitioner claims he had requested the production and inspection of the dash cam video taken on the night of his traffic stop. However, while the video may have been beneficial to his case, the lack of the video tape did not prevent petitioner from filing his state application for writ of habeas corpus. Further, it is noted that petitioner did not make his initial request for the video until more than ten months after his conviction became final based on the denial of his appeal by the United States Supreme Court. Petitioner has made no attempt to explain this delay.

Appendix B-1

Next, petitioner acknowledges his state application was past due when he received notice from the clerk on October 10, 2017 that his request for the video tape had been denied. However, instead of filing his state application at that time, petitioner claims he then sought the assistance of legal counsel before mailing his state application on December 26, 2017.

Finally, petitioner has failed to provide any explanation for the delay of more than four months between the date on which his state application was denied by the Texas Court of Criminal Appeals and the date he filed his federal petition. Petitioner did not pursue his rights diligently.

The statutory limitations period is subject to equitable tolling in appropriate cases. *See Holland v. Florida*, 560 U.S. 631, 645, 130 S.Ct. 2549, 2560, 177 L.Ed.2d 130 (2010); *United States v. Jackson*, 470 F. App'x 324 (5th Cir. 2012). However, "a petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Holland*, 560 U.S. at 649. *Holland* defines "diligence" for these purposes as "reasonable diligence, not maximum feasible diligence." *Id.*, at 653. "[E]quity is not intended for those who sleep on their rights." *Mathis v. Thaler*, 616 F.3d 461, 474 (5th Cir. 2010).

Petitioner has failed to demonstrate he pursued his rights diligently and could not have discovered his claims earlier due to some extraordinary circumstance. Neither proceeding *pro se*, having limited access to a law library, nor lacking knowledge of filing deadlines can serve as a basis for equitable tolling as they are not a "rare and exceptional" circumstance of prison life. *See Felder v. Johnson*, 204 F.3d 168, 170 (5th Cir. 2000). A *pro se* prisoner's ignorance of the law of habeas corpus is likewise insufficient to invoke equitable tolling. *Alexander v. Cockrell*, 294 F.3d 626, 629 (5th Cir. 2002). Accordingly, equitable tolling is not warranted, and the petition is barred by limitations. Therefore, petitioner's objections should be overruled.

Additionally, the petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard

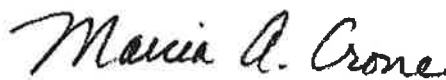
for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the petitioner need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

Here, the petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. The factual and legal questions advanced by the petitioner are not novel and have been consistently resolved adversely to his position. In addition, the questions presented are not worthy of encouragement to proceed further. Thus, the petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Therefore, a certificate of appealability shall not be issued.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

Signed this date
Jul 15, 2019



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

MICHAEL BRENT BROWN,

Petitioner,

versus

DIRECTOR, TDCJ-CID,

Respondent.

~~~~~

CIVIL ACTION NO. 1:19-CV-54

## FINAL JUDGMENT

This action came on before the Court, Honorable Marcia A. Crone, District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered, it is

**ORDERED** and **ADJUDGED** that the above-styled petition for writ of habeas corpus is **DISMISSED** as barred by limitations.

All motions by either party not previously ruled on are **DENIED**.

**Signed this date**

Jul 15, 2019

Marcia A. Crone.

MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE

Appendix B-4

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

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MICHAEL BRENT BROWN,

Petitioner,

*versus*

DIRECTOR, TDCJ-CID,

Respondent.

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CIVIL ACTION NO. 1:19-CV-54

**MEMORANDUM OPINION AND ORDER**

Petitioner Michael Brent Brown, an inmate confined at the Polunsky Unit, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

**Discussion**

A final judgment was entered on July 15, 2019, dismissing the above-styled action as barred by limitations. Petitioner has filed a motion for reconsideration (docket entry no.7). Since petitioner's motion was filed within 28 days of the judgment it is interpreted as a motion for relief under Rule 59 of the Federal Rules of Civil Procedure. This memorandum considers such motion.

**Analysis**

FED. R. CIV. P. 59 provides in pertinent part the following:

(a)(1) *Grounds for New Trial*. The court may, on motion, grant a new trial on all or some of the issues - and to any party - as follows:

- (A) after a jury trial, for any of reason for which a new trial has heretofore been granted in an action at law in federal court; or
- (B) after a non jury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) *Further Action After a Nonjury Trial*. After a nonjury trial the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(e) *Motion to Alter or Amend Judgment*. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Appendix B-5

After careful consideration of petitioner's motion, the court is of the opinion that petitioner's motion fails to set forth a meritorious ground warranting relief from the judgment. Petitioner has failed to demonstrate he pursued his rights diligently and could not have discovered his claims earlier due to some extraordinary circumstance. Petitioner's petition for writ of habeas corpus is barred by limitations. Additionally, the petitioner is not entitled to the issuance of a certificate of appealability.

**ORDER**

For the reasons set forth above, petitioner's motion to alter or amend judgment should be denied. It is therefore,

**ORDERED** that petitioner's motion to alter or amend judgment is **DENIED**.

SIGNED at Beaumont, Texas, this 15th day of October, 2019.

*Marcia A. Crone*

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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

|                     |   |                           |
|---------------------|---|---------------------------|
| MICHAEL BRENT BROWN | § |                           |
| VS.                 | § | CIVIL ACTION NO. 1:19cv54 |
| DIRECTOR, TDCJ-CID  | § |                           |

## ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS

Petitioner seeks permission to proceed *in forma pauperis* on appeal. Having reviewed petitioner's application solely on the basis of financial status, the court finds that petitioner meets the indigency requirements of 28 U.S.C. § 1915. It is therefore,

**ORDERED** that permission to proceed *in forma pauperis* on appeal is **GRANTED**.

**SIGNED this the 3rd day of October, 2019.**

  
KEITH F. GIBLIN  
UNITED STATES MAGISTRATE JUDGE

## Appendix C



## State Counsel for Offenders

Texas Board of Criminal Justice

P.O. Box 4005  
Huntsville, TX 77342-4005  
(936) 437-5203

March 1, 2017

Michael Brown  
TDCJ #1978080  
Polunsky Unit (TL/54)  
3872 FM 350 South  
Livingston, TX 77351

Dear Mr. Brown:

We have reviewed your case records and your recent letter. The major issue you raise regarding your conviction can be attacked by filing a Writ of habeas corpus. See the enclosed Writ Information sheet.

If you feel that your counsel at trial did not provide you with adequate representation, you may review Chapter 4 of the State Counsel for Offenders as it relates to Writs based on ineffective assistance of counsel.

A review of the Court of Appeals website shows that your PDR was denied/refused on May 4, 2016. You also attempted to file a Writ while your appeal was pending and this Writ, WR -7, 645-06 was refused on that basis. If you have not filed any other Writ, you can file a new Writ as the previous dismissal of your Writ was not on the merits of the case.

**The Affidavit you had presented to us is being returned to you.**

Sincerely,

A handwritten signature in black ink, appearing to be "Francis Mwangi".

Francis Mwangi, Staff Attorney  
Legal Services

FMW/tw  
Enclosures  
c: File

Appendix D

Date: JUNE 14, 2017

To: MR. BROWN,

Re: B140443-R

In accordance with the Open Records Act Section 552.028:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Section (a) (1), or that individual's agent, information held by the governmental body pertaining to that individual.

**You may purchase copies for a fee of \$1.00 per page of public documents on file in the District Clerk's office. For information regarding cost, please be specific when requesting estimate of cost.**

**PAYMENT OF COPIES MUST BE MADE IN ADVANCE.**

THE DISTRICT CLERK ONLY HAS ONE EXHIBIT, IT IS STATES EXHIBIT #3. THIS OFFICE DOES NOT KNOW SPECIFICALLY WHAT IS ON THAT EXHIBIT. YOU ARE ENTITLED TO VIEW THIS COPY BUT YOU MAY NOT ACQUIRE A COPY. YOU NEED A COURT ORDER TO CHECK OUT EXHIBITS. YOU MAY NEED TO CONTACT THE COURT REPORTER FOR "DASH CAM" VIDEO'S, OR THE ARRESTING AGENCY.

Appendix E

**United States Court of Appeals  
for the Fifth Circuit**

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No. 19-40720

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MICHAEL BRENT BROWN,

*Petitioner-Appellant,*

*versus*

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

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Before WILLETT, HO, and DUNCAN, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that appellant's motion for leave to file out of time, the motion for reconsideration is GRANTED.

A member of this panel previously denied appellant's motion for a certificate of appealability. The panel has considered appellant's motion for reconsideration.

IT IS FURTHER ORDERED that the motion is DENIED.



No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

MICHAEL BRENT BROWN — PETITIONER  
(Your Name)

VS.

Bobby Lumpkin, Director — RESPONDENT(S)

**PROOF OF SERVICE**

I, MICHAEL BRENT BROWN, do swear or declare that on this date, October 29, 2020, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

THE STATE PROSECUTING ATTORNEY, P.O. BOX 13046, AUSTIN, TX 78711-3046  
\_\_\_\_\_  
\_\_\_\_\_

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 29, 2020

Michael Brent Brown  
(Signature)