

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-50641



A True Copy
Certified order issued Jul 24, 2020

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

ROBERT MUNOZ,

Petitioner-Appellant

v.

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

Respondent-Appellee

Appeals from the United States District Court
for the Western District of Texas

ORDER:

Robert Munoz, Texas prisoner # 01859917, was convicted of two counts of sexual assault of a child younger than 17 years of age and was sentenced to 10 years of imprisonment on each count, to be served consecutively. He now moves for a certificate of appealability (COA) following the dismissal of his 28 U.S.C. § 2254 petition as time barred. Munoz also moves for leave to proceed in forma pauperis (IFP) on appeal. He asserts that his § 2254 petition should not have been dismissed as time barred because his actual innocence constituted an exception to the statute of limitations.

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). When a § 2254 petition is dismissed on procedural grounds, "a COA should issue when the prisoner

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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).

Munoz has not made the requisite showing. *See id.* Accordingly, his motions for a COA and leave to proceed IFP on appeal are DENIED.

/s/ James E. Graves, Jr.

JAMES E. GRAVES, JR.
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

ROBERT MUNOZ

vs.

LORIE DAVIS

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NO: MO:18-CV-00191-DC

FINAL JUDGMENT

On this day, the Court entered an Order Dismissing Petitioner's Application for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. §2254, as time-barred. The Court now enters its Final Judgment pursuant to Federal Rule of Civil Procedure 58.

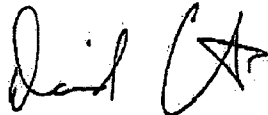
Accordingly, it is hereby **ORDERED** that Petitioner's Application for Writ of Habeas Corpus by a Person in State Custody filed pursuant to 28 U.S.C. §2254 is **DENIED**.

It is further **ORDERED** that the above-captioned cause is **DISMISSED WITH PREJUDICE** with the Parties to bear their own costs.

It is finally **ORDERED** that all other pending motions, if any, are **DENIED AS MOOT** and a **CERTIFICATE OF APPEALABILITY WILL NOT ISSUE** in this case.

It is so **ORDERED**.

SIGNED this 7th day of June, 2019.



DAVID COUNTS
UNITED STATES DISTRICT JUDGE