

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

No. 19-50165

FILED
May 6, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAVID ANDREW DIEHL, also known as David A. Diehl,

Defendant-Appellant

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

USDC No. 1:16-CV-1124

USDC No. 1:10-CR-297-1

Before HAYNES, GRAVES, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

David Andrew Diehl, federal prisoner # 53214-018, was found guilty of ten counts of producing child pornography under 18 U.S.C. § 2251(a), and he was sentenced to serve a total of 600 months in prison and five years of supervised release. The district court denied the 28 U.S.C. § 2255 motion he filed to challenge these convictions and sentence, and he moves this court for a certificate of appealability (COA) on claims concerning limitations, the

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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jurisdictional nexus to support his conviction, his sentence, ineffective assistance of counsel, *Brady v. Maryland*, 373 U.S. 83 (1963), and discovery. He also argues that the district court erred by not holding an evidentiary hearing. His outstanding motions to supplement his COA motion are GRANTED.

To obtain a COA, one must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To satisfy that burden, he must show that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong,” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), or that the issues he presents “are adequate to deserve encouragement to proceed further,” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Because Diehl has not met these standards, his COA motion is DENIED. We construe the motion for a COA with respect to the district court’s declining to hold an evidentiary hearing as a direct appeal of that issue, *see Norman v. Stephens*, 817 F.3d 226, 234 (5th Cir. 2016), and AFFIRM.

Sincerely,

LYLE W. CAYCE, Clerk



By: Kenneth G. Lotz, Deputy Clerk

Enclosure(s)

Mr. David Andrew Diehl
Mr. Joseph H. Gay Jr.

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LYLE W. CAYCE, Clerk



By: Kenneth G. Lotz, Deputy Clerk

Enclosure(s)

Mr. David Andrew Diehl
Mr. Joseph H. Gay Jr.

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FOR THE FIFTH CIRCUIT

No. 19-50165

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

DAVID ANDREW DIEHL, also known as David A. Diehl,

Defendant - Appellant

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

ON PETITION FOR REHEARING.

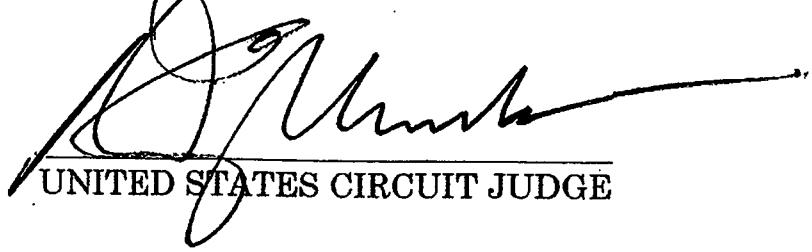
Before HAYNES, GRAVES and ENGELHARDT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

REVIEWED AND APPROVED
REVIEWED AND APPROVED
REVIEWED AND APPROVED

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

EXHIBIT B

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
New Orleans, LA 70130

October 07, 2020

#53214-018
Mr. David Andrew Diehl
USP Coleman II
846 N.E. 54th Terrace, P.O. Box 1034
Coleman, FL 33521-0000

No. 19-50165 USA v. David Diehl
USDC No. 1:16-CV-1124

Dear Mr. Diehl,

We are responding to your correspondence received September 28, 2020.

The Court's opinion issued on May 6, 2020. Any petition for panel rehearing and/or petition for rehearing en banc was due for filing by not later than June 20, 2020. The Court granted as extension of time to file a petition for rehearing until June 29, 2020.

The Court received the petition for panel rehearing on June 8, 2020. A second extension to file a petition for rehearing en banc was filed on June 26, 2020 and denied on July 2, 2020.

Because the time had expired to file a petition for rehearing en banc the petition for panel rehearing was submitted to the court on July 2, 2020. As previously advised in the Court's August 30, 2020 notice the time to file and submit a petition for rehearing en banc had expired.

The petition for panel rehearing was denied on September 11, 2020.

The Court has issued its final ruling. Forthcoming submissions in this appeal will neither be addressed nor acknowledged.

Sincerely,

LYLE W. CAYCE, Clerk
Claudia N. Farrington

By:
Claudia N. Farrington, Deputy Clerk
504-310-7706

cc: Mr. Joseph H. Gay Jr.

Appendix C