

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 23, 2022

Lyle W. Cayce
Clerk

ROBERT C. DEL CID,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,
Correctional Institutions Division,*

Respondent—Appellee.

Application for Certificate of Appealability from the
United States District Court for the Western District of Texas
USDC No. 5:19-CV-766

ORDER:

Robert C. Del Cid, Texas prisoner # 02073807, requests a certificate of appealability (COA) to challenge the dismissal, as time barred, of his 28 U.S.C. § 2254 application. Del Cid filed the § 2254 application to attack his jury trial conviction of murder, for which he is serving a sentence of life imprisonment.

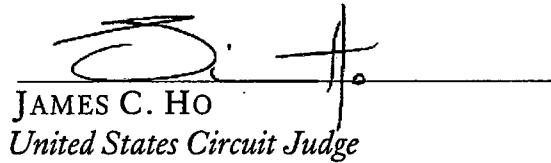
In his COA filing, Del Cid contends that, at his prison unit, inmates were told to place their outgoing mail in a drop box in their housing area and that there were delays in recording the outgoing mail in the prison mail log. He asserts that the prison mail log shows only the date the filing was received

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in the prison mailroom, not the date the filing was deposited in the prison mail system. Del Cid contends that, even though the prison mail log shows that his state habeas application was received in the prison mailroom on April 26, 2019, this does not disprove his assertion, contained in his unsworn declaration, that he deposited it for mailing on April 24, 2019, which would render his § 2254 application timely filed. He also argues the merits of his constitutional claims.

In order to obtain a COA, Del Cid 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, 484 (2003). When, as in this case, a district court has dismissed a § 2254 application on procedural grounds, this court should issue a COA “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*, 529 U.S. at 484.

Del Cid has failed to make the required showing. Accordingly, his request for a COA is DENIED.



JAMES C. HO
United States Circuit Judge