

United States Court of Appeals
for the Fifth Circuit

No. 22-10225

United States Court of Appeals
Fifth Circuit

FILED

July 27, 2022

CARLOS SANTANA R. GARCIA,

Lyle W. Cayce
Clerk

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 Northern District of Texas
USDC No. 6:20-CV-84

ORDER:

Carlos Santana R. Garcia, Texas prisoner # 01317728, moves for a certificate of appealability (COA) to appeal the dismissal, as time barred, of his 28 U.S.C. § 2254 petition challenging his conviction for aggravated sexual assault of a child. Garcia contends that he is entitled to delayed commencement of 28 U.S.C. § 2244(d)'s one-year limitation period based on a state-created impediment to timely filing, § 2244(d)(1)(B), as well as his late discovery of the factual predicate of one of his 14 ineffective assistance of counsel claims, § 2244(d)(1)(D). He also argues that he is entitled to equitable tolling of the limitation period.

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To obtain a COA, Garcia must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To meet that burden, he must show “at least, that jurists of reason would find it debatable whether the [§ 2254] 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).

Garcia fails to make the requisite showing. Accordingly, the motion for a COA is DENIED.

/s/ Leslie H. Southwick

LESLIE H. SOUTHWICK
United States Circuit Judge