

United States Court of Appeals  
for the Fifth Circuit

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No. 21-30768

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BYRON S. LLOYD,

*Petitioner—Appellant,*

*versus*

TIM HOOPER, *Warden, Louisiana State Penitentiary,*

*Respondent—Appellee.*

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 5:19-CV-433

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ON PETITION FOR REHEARING EN BANC

Before HIGGINBOTHAM, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R. 35 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.



United States Court of Appeals  
for the Fifth Circuit

Certified as a true copy and issued  
as the mandate on Jan 05, 2023

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No. 21-30768

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United States Court of Appeals  
Fifth Circuit

**FILED**

August 25, 2022

Attest: *Lyle W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit  
BYRON S. LLOYD,

Lyle W. Cayce  
Clerk

*Petitioner—Appellant,*

*versus*

TIM HOOPER, *Warden, Louisiana State Penitentiary,*

*Respondent—Appellee.*

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Application for a Certificate of Appealability from  
the United States District Court  
—for the Western District of Louisiana  
USDC No. 5:19-CV-433

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Before HIGGINBOTHAM, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:

Byron S. Lloyd, Louisiana prisoner # 610611, moves this court for a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 petition, wherein he sought to challenge his conviction of second-degree murder. He argues that (1) the evidence was insufficient to establish his intent to shoot the victim; (2) his trial counsel was ineffective for failing to investigate his medical records; (3) the State suppressed evidence that the victim was armed, suppressed the grand jury testimony of the eyewitnesses and other witnesses, and suppressed the eyewitness's criminal record; (4) his

confession was involuntary; (5) the grand jury transcript was not complete on appeal; (6) he was improperly denied a state postconviction hearing; and (7) the district court abused its discretion by denying him an evidentiary hearing on his § 2254 petition. Lloyd has also filed a motion for leave to file a supplemental COA brief, a motion for appointment of counsel, and a motion to vacate the judgment. The motion to file a supplemental COA brief is GRANTED and we turn now to the motion for COA.

To obtain a COA to appeal the denial of his § 2254 petition, Lloyd must make “a substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), by “showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further,” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks and citation omitted). Because the district court denied Lloyd’s § 2254 petition for lack of merit, he must show that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.*

Lloyd has failed to make the requisite showing. Consequently, his motion for a COA is DENIED. His motions for appointment of counsel, and to vacate the judgment are also DENIED. As Lloyd fails to make the required showing for a COA on his constitutional claims, we do not reach whether the district court erred by denying an evidentiary hearing. *See United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020), *cert. denied*, 142 S. Ct. 122 (2021).