

**United States Court of Appeals
for the Fifth Circuit**

United States Court of Appeals
Fifth Circuit

FILED

June 1, 2023

Lyle W. Cayce
Clerk

No. 22-40416

LE'TROY DEWAYNE MERRITT,

Petitioner—Appellant,

versus

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

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Eastern District of Texas
USDC No. 6:19-CV-616

ORDER:

Le'Troy Dewayne Merritt, Texas prisoner # 02161982, seeks a certificate of appealability (COA) to challenge the dismissal of his 28 U.S.C. § 2254 application. Merritt filed the § 2254 application to attack his conviction of aggravated robbery, for which he was sentenced to a 25-year term of imprisonment.

Merritt renews his claims that the trial court erred in admitting text messages at his jury trial and that the state appellate court erred in determining that the admission of the text messages was harmless. Attacking

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the district court's determination that the above claims were procedurally defaulted, Merritt argues that the claims were not procedurally barred because they were litigated on direct appeal and because he fairly presented them to the Texas Court of Criminal Appeals in his state habeas application.

To obtain a COA, Merritt must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Where, as here, the district court's denial of relief is based on procedural grounds, a COA may not issue unless the prisoner shows 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." *Id.*

Merritt has failed to make the requisite showing. Accordingly, his request for a COA is DENIED.


EDITH H. JONES
United States Circuit Judge

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No. 22-40416

LE'TROY DEWAYNE MERRITT,

Petitioner—Appellant,

versus

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

Respondent—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:19-CV-616

UNPUBLISHED ORDER

Before KING, JONES, and SMITH, *Circuit Judges.*

PER CURIAM:

A member of this panel previously DENIED Appellant's motion for a certificate of appealability. The panel has considered Appellant's motion for reconsideration.

IT IS ORDERED that the motion is DENIED.

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LE'TROY DEWAYNE MERRITT,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

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Case No. 6:19-cv-616-JDK-KNM

FINAL JUDGMENT

The Court, having considered Petitioner's case and rendered its decision by opinion issued this same date, hereby enters **FINAL JUDGMENT**.

It is **ORDERED** that this petition for a writ of habeas corpus is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All pending motions are **DENIED** as **MOOT**.

The Clerk of Court is instructed to close this case.

So **ORDERED** and **SIGNED** this 14th day of **June, 2022**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE

Appendix A