

In the United States  
Supreme Court

USCA #23-30221

USDC #3:22-cv-397

Bradley Wayne Berry,

Petitioner-Appellant

VERSUS

Kirt Guerin,

Warden, Elays Hunt Correctional Center

motion for Extension of time to file writ of certiorari  
concerning the above/present numbered case

MAY IT PLEASE THE COURT:

NOW INTO COURT, in pro se firm, comes Petitioner, Bradley Berry, who respectfully moves this Honorable Court for a 90 day extension of time to file writ of certiorari concerning his conviction.

Petitioner asserts that due to inadequate access to the law library due to the effects of staff shortage at the facility he is being confined at and quarantine measures taken by same facility he has had a difficult time of preparing a proper research in law procedures and law in general as it applies to his case and as an effect he has not been able to




present a proper defense as to his claim of federal constitution violations of his conviction by the state of Louisiana and furthermore, requests an extension of time in order to more thoroughly prepare a proper presentation of his federal rights in the federal and state constitution that have been violated.

Petitioner is a layman of the law and is untrained in the proper procedure(s) in filing but claims that he has maintained his claim(s) of constitutional violations throughout all previous courts and wishes to seek certiorari in this honorable court on said issues in a proper manner.

### Prayer

THEREFORE, Petitioner prays that this Honorable Court will grant said motion and allow him a 90 day extension in order to research his claim(s) more thoroughly and to be properly filed in this Honorable Court.

Signed this 13th day of August 2023.

  
Bradley Berry #430191  
E.H.C.C.  
P.O. Box 174  
St. Gabriel, La. 70776

United States Court of Appeals  
for the Fifth Circuit

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No. 23-30221

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United States Court of Appeals  
Fifth Circuit

**FILED**

July 27, 2023

Lyle W. Cayce  
Clerk

BRADLEY WAYNE BERRY,

*Petitioner—Appellant,*

*versus*

KIRT GUERIN, *Warden, Elayn Hunt Correctional Center,*

*Respondent—Appellee.*

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Application for Certificate of Appealability  
the United States District Court  
for the Western District of Louisiana  
USDC No. 3:22-CV-397

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ORDER:

Bradley Wayne Berry, Louisiana state prisoner # 430191, seeks a certificate of appealability (COA) in order to appeal from the district court's denial of his 28 U.S.C. § 2254 application. His motions to amend his COA brief are GRANTED. His request for a stay of these proceedings is DENIED. He argues that the 2018 amendment to the Louisiana constitution requiring a unanimous jury verdict in certain cases should have been applied to his conviction while it was on direct review and that the holding in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), should have been applied to his conviction while it was on collateral review. Because he has

No. 23-30221

failed to raise in this court the challenge to his indictment that he included in his § 2254 application, he has abandoned that issue. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

To obtain a COA, Berry must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). When a district court rejects a claim on the merits, this court will issue a COA only if the movant demonstrates that jurists of reason could disagree with the district court’s resolution of the constitutional claims or could conclude the issues presented “deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 336 (internal quotation marks and citation omitted).

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

/s/ Carl E. Stewart

CARL E. STEWART

*United States Circuit Judge*