

United States Court of Appeals
for the Fifth Circuit

No. 23-50396

United States Court of Appeals
Fifth Circuit

FILED

September 27, 2023

Lyle W. Cayce
Clerk

ERNESTO L. NATIVIDAD,

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 Western District of Texas
USDC No. 7:22-CV-216

ORDER:

Ernesto L. Natividad, Texas prisoner # 2136965, moves for a certificate of appealability (COA) to appeal the denial and dismissal of his 28 U.S.C. § 2254 application challenging his conviction and sentence for murder. He contends that the district court erred by dismissing his § 2254 application as time barred. Specifically, he argues that he was entitled to benefit from a March 19, 2020, Supreme Court order issued due to the Covid-19 pandemic that extended the deadline to file petitions for writs of certiorari for 150 days. In the alternative, he contends that he is entitled to

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equitable tolling because he was unable to access the prison law library and other legal resources due to Covid-19 lockdowns.

To obtain a COA with respect to the denial of a § 2254 application, a prisoner 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, 483 (2000). When a district court has denied a request for habeas relief on procedural grounds, the prisoner must show “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.

Natividad fails to make the necessary showing. His motion for leave to file an amended brief is GRANTED, and his motions for leave to proceed in forma pauperis and for a COA are DENIED.

/s/JAMES E. GRAVES, JR
JAMES E. GRAVES, JR.
United States Circuit Judge