

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BYRON RAY BARKER —+ PETITIONER
VS.
BOBBY LUMPKIN — RESPONDENT

MOTION FOR EXTENSION OF TIME

TO THE HONORABLE JUDGES OF THIS COURT:

COMES NOW, BYRON RAY BARKER ("Barker"), TDCJ#02182745, Petitioner Pro se and brings this Motion for Extension of Time to file a Writ of Certiorari ("WOC").

By the Rules and Order of this Court, Barker is required to file said WOC within 90 days from the date of denial of a Certificate of Appealability (5th Cir. No. 23-20234; USDC No. 4:21-CV-3001). Barker's COA was denied on November 09, 2023 making the due date February 09, 2024.

Barker received the denial notification on December 22, 2023 through the prison legal mail, a month and a half later at no fault of his own. Barker has enclosed a copy of the USPS envelope date in the bottom left corner "1st 12/22" (see EX "A") as it appears the letter was delayed for some unknown reason.

Barker believes to properly research the laws applicable to the issues presented will take longer than the little time remaining on the clock. Barker believes this is an extraordinary circumstance, a state created impediment and this request is not designed to harass the Respondent, this Court, nor unnecessarily delay these proceedings, but to ensure Barker is fully able to address all issues properly. Furthermore, the Respondent is in no way prejudiced as Barker is incarcerated and operating under controlled and severe limitations. Barker is indigent and untrained in all aspects of legal research and writing.

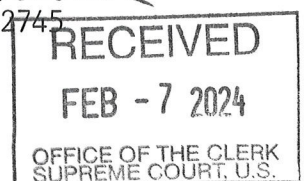
Accordingly, Barker respectfully requests an extension of time of sixty (60) days up to and including April 10, 2024 (60 days from due date) to file said WOC.

Wherefore, premises considered, Barker Prays that this Honorable Court will GRANT this motion for extension of time.

Respectfully submitted,

Byron Ray Barker

Byron Ray Barker #02182745
Wainwright Unit
2665 Prison Rd 1
Lovelady, TX 7585111



United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 9, 2023

Lyle W. Cayce
Clerk

No. 23-20234

BYRON RAY BARKER,

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 Southern District of Texas
USDC No. 4:21-CV-3001

ORDER:

Byron Ray Barker, Texas prisoner # 2182745, moves for a certificate of appealability (COA) to appeal the dismissal of his 28 U.S.C. § 2254 application challenging his conviction and sentence for continuous sexual abuse of a child. He argues only that the district court erred by (1) applying deference to the state court's denial of habeas relief under the Antiterrorism and Effective Death Penalty Act and (2) denying on the merits his claims that his trial counsel rendered ineffective assistance by (a) abandoning a pretrial motion to admit evidence that Barker's father was the actual perpetrator, and (b) failing to impeach the victim and her stepsister with their prior

inconsistent statements. Accordingly, he has abandoned any challenge to the dismissal of his other § 2254 claims. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993); *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

To obtain a COA, Barker must show that “jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). He fails to make the necessary showing. His motion for a COA is therefore DENIED.

/s/ Catharina Haynes
Catharina Haynes
United States Circuit Judge