

Appendix A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-11744
USDC No. 3:14-CV-2984

JAMES LE'ROY KELLEY,

Petitioner–Appellant,

versus

LORIE DAVIS, Director,
Texas Department of Criminal Justice, Correctional Institutions Division,

Respondent–Appellee.

Appeal from the United States District Court
for the Northern District of Texas

O R D E R:

James Kelley, Texas prisoner #1894193, is imprisoned for possessing cocaine in a drug-free zone and fraudulently possessing identifying information. He moves for a certificate of appealability (“COA”) to appeal the denial of his 28 U.S.C. § 2254 application in which he raised claims that (1) trial counsel was ineffective because (a) counsel did not object to the absence of a court

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reporter during the plea and sentencing proceedings and (b) counsel was not present and did not insist that Kelley be present at sentencing; (2) several documents in the state trial court records were fraudulent; and (3) the trial court did not orally impose consecutive sentences.

Kelley is entitled to a COA if he makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see Miller-El*, 537 U.S. 322, 336 (2003). He must establish that reasonable jurists would find the decision to deny relief debatable or wrong, *see Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000), or that the issues he presents deserve encouragement to proceed further, *see Miller-El*, 537 U.S. at 327.

Kelley has not made the required showing. Accordingly, the motion for a COA is DENIED. All outstanding motions are also DENIED.

/s/ Jerry E. Smith
JERRY E. SMITH
United States Circuit Judge

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JAMES LE'ROY KELLEY,	)	
ID # 01894193,	)	
Petitioner,	)	
vs.	)	No. 3:14-CV-2984-D
	)	
LORIE DAVIS, Director,	)	
Texas Department of Criminal	)	
Justice, Correctional Institutions Division,	)	
Respondent.	)	

JUDGMENT

This action came on for consideration by the court, and the issues having been duly considered and a decision duly rendered,

It is ordered and adjudged that:

1. The petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 is denied with prejudice.
2. The clerk shall transmit a true copy of this judgment and the order adopting the findings and recommendation of the United States Magistrate Judge to all parties.

Signed November 21, 2016.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

Appendix H

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-11744

JAMES LE'ROY KELLEY,

Petitioner - Appellant

versus

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

Appeal from the United States District Court
for the Northern District of Texas

ON MOTION FOR RECONSIDERATION AND REHEARING EN BANC

Before WIENER, SMITH, and HAYNES, Circuit Judges.

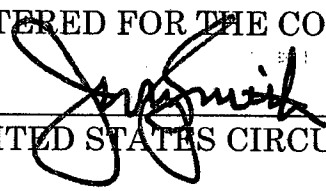
PER CURIAM:

- (✓) The Motion for Reconsideration is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.
- () The Motion for Reconsideration is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor, (FED R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

APPENDIX H

- () A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service and not disqualified not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**