

May 16, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10806
Summary Calendar

STEVE G. TEPP,

Petitioner-Appellant,

versus

NATHANIEL QUARTERMAN, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
No. 4:06-CV-284

Before DAVIS, SMITH, and OWEN, Circuit Judges.

PER CURIAM:*

Steve Tepp, a Texas prisoner, filed a 28 U.S.C. § 2254 habeas corpus petition to challenge his conviction and sentence. The district court dismissed for want of prosecution. Tepp seeks a certificate of appealability ("COA") to appeal the dismissal.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

To obtain a COA, Tepp 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 v. McDaniel, 529 U.S. 473, 484 (2000). The record does not reflect that Tepp engaged in delay or contumacious conduct. See Long v. Simmons, 77 F.3d 878, 879-80 (5th Cir. 1996); Berry v. CIGNA/RSI-CIGNA, 975 F.2d 1188, 1191 n.6 (5th Cir. 1992). Consequently, he has established that reasonable jurists would debate whether the district court correctly dismissed his petition for want of prosecution. See Long, 77 F.3d at 879-80; Berry, 975 F.2d at 1191 n.6. Based on the materials of record, it is impossible to determine whether reasonable jurists would debate whether Tepp presents valid claims of a constitutional deprivation. See Houser v. Dretke, 395 F.3d 560, 562 (5th Cir. 2004).

Consequently, the motion for a COA is GRANTED, the judgment is VACATED, and the case is REMANDED for further proceedings consistent with this ruling. All other outstanding motions are DENIED. We express no view on the merits of Tepp's claims or on what procedures the district court should use to resolve them.