

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

No. 17-20008

United States Court of Appeals
Fifth Circuit

FILED

November 1, 2017

Lyle W. Cayce
Clerk

MATTHEW JAMES LEACHMAN,

Petitioner-Appellant

v.

LORIE DAVIS, 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. 4:16-CV-3202

Before DAVIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Matthew James Leachman, Texas prisoner # 903617 / Harris County # 01525039, was convicted of indecency with a child. He seeks a certificate of appealability (COA) to appeal the district court's order denying his motion for stay and abeyance of his 28 U.S.C. § 2254 proceeding so that he could exhaust his state court remedies. Leachman contends that the district court erred by denying his motion, arguing that he had good cause warranting a stay, i.e., his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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reasonable confusion regarding whether the sole claim raised in his state habeas application was exhausted pursuant to the requirements set forth in Texas Government Code § 501.0081 and thus whether the application was properly filed for tolling purposes pursuant to 28 U.S.C. 2244(d)(2).

A district court should grant a stay if it determines that the prisoner has shown good cause warranting a stay, that the prisoner has raised meritorious issues, and that the prisoner has not engaged in intentionally dilatory tactics. *Rhines v. Weber*, 544 U.S. 269, 278 (2005). Leachman has not satisfied this standard; at the very least, he has failed to show good cause excusing his failure to exhaust his state remedies. Thus, he has not established that the district court abused its discretion in denying his motion for a stay. *See id.* at 278.

The district court's denial of the motion for stay and abeyance is AFFIRMED. Leachman's motion for a COA is DENIED AS UNNECESSARY as no COA is required to review the district court's ruling on this non-merits issue. *See Young v. Stephens*, 795 F.3d 484, 494 (5th Cir. 2015).