

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 29, 2021

Lyle W. Cayce
Clerk

No. 20-50620

TERRENCE CARMICHEAL,

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 Western District of Texas
USDC No. 5:19-CV-665

Before HIGGINBOTHAM, SMITH, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Terrence Carmicheal, Texas prisoner # 2021606, was convicted on one count of continuous sexual abuse of a child and two counts of indecency with a child. He moves for a certificate of appealability (“COA”) under 28

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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U.S.C. § 2253(c) to appeal his convictions and sentence. The district court denied relief, concluding that Carmicheal’s petition was time barred.

To obtain a COA, Carmicheal 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). He can satisfy this standard “by demonstrating 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). When, as is the case here, the district court’s dismissal is on procedural grounds, Carmicheal 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.

Because Carmicheal has not made the requisite showing, his COA motion is DENIED. We cannot grant a COA on Carmicheal’s request for an evidentiary hearing. *See United States v. Davis*, 971 F.3d 524, 534–35 (5th Cir. 2020), *petition for cert. filed* (U.S. Mar. 18, 2021) (No. 20-7553).