

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

July 7, 2021

Lyle W. Cayce  
Clerk

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No. 20-50935

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KENNETH CLAY,

*Petitioner—Appellant,*

*versus*

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,  
Correctional Institutions Division,*

*Respondent—Appellee.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:19-CV-1241

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Before SOUTHWICK, GRAVES, and COSTA, *Circuit Judges.*

PER CURIAM:\*

Kenneth Clay, formerly Texas prisoner # 2228320, seeks a certificate of appealability (COA) to challenge the district court's denial of his 28 U.S.C. § 2254 petition, in which he challenged the length of his imprisonment after being sentenced to three years for a guilty plea conviction

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-50935

for possession of a controlled substance. Clay also moves for the appointment of counsel.

To obtain a COA, Clay must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). During the pendency of this appeal, Clay was released from state custody. Clay’s claims have been rendered moot by his release. *See Spencer v. Kemna*, 523 U.S. 1, 7-18 (1998); *Bailey v. Southerland*, 821 F.2d 277, 278-79 (5th Cir. 1987). Therefore, this appeal is DISMISSED AS MOOT. Clay’s motions for a COA and appointment of counsel are, likewise, DENIED AS MOOT.