

Scott S. Harris - Clerk
United States Supreme Court
Washington D.C. 20543-0001

12/18/24

Dear Mr Harris,

I am writing to inform you that this day I received the requested information regarding writing a writ of Certiorari. However I did not receive a response to my request for a time extension. I would very much like to write a writ but need more time to do so. My unit was just recently on lock down keeping me from the law library and researching. That along with the holidays make it almost impossible to educate myself as I am unlearned. Please notice I have included a copy of the letter stating the deadline for this writ. Also notice I have included a motion for appointment of counsel. Please bring this to the attention of the court at your earliest convenience. Thank you for your time.



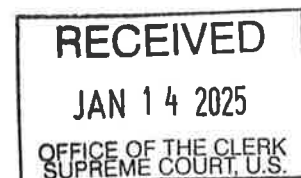
Matthew Flowers

Pro Se TDCJ # 2371638

Wynne Unit

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United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 10, 2024

Lyle W. Cayce
Clerk

No. 24-10486

MATTHEW LEE FLOWERS,

Petitioner—Appellant,

versus

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

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Northern District of Texas
USDC No. 2:23-CV-77

UNPUBLISHED ORDER

Before SMITH, GRAVES, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

Matthew Lee Flowers, Texas prisoner # 02371638, seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 application, challenging his conviction for indecency with a child. Flowers argues that (i) he received ineffective assistance when his trial counsel (a) failed to question the victim on cross-examination regarding

No. 24-10486

certain inconsistent statements; (b) failed to seek suppression of a law enforcement officer's body camera video; (c) advised Flowers not to testify rather than seek accommodations for his hearing impairment; (d) failed to call the victim's mother as a witness; and (e) requested that the trial court instruct the jury on the lesser-included offense of indecency; (ii) he is actually innocent and there was insufficient evidence to prove his guilt; (iii) his right to a speedy trial was violated; (iv) the trial court erred by refusing to provide the jury with a copy of a protective order during its deliberations; (v) a law enforcement officer destroyed evidence; and (vi) he was denied his right to a public trial.

As a preliminary matter, Flowers fails to adequately brief his claims that (I) he received ineffective assistance when his trial counsel failed to (A) object to the jury charge on the ground that it did not include probation as a punishment option; (B) move for a new trial; (C) object to the trial court's refusal to allow the jury to view the victim's pretrial statements during deliberations; and (D) prepare for trial and provide a video of the victim's interview and transcripts to the jury; (II) he received ineffective assistance when appellate counsel failed to raise various issues on appeal; (III) the trial court erred when it (A) failed to instruct the jury that probation was a punishment option; and (B) refused to allow the jury to view the victim's pretrial statements during deliberations; and (IV) the district court abused its discretion by denying his motion for appointment of counsel. He has, accordingly, abandoned these claims. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999). Additionally, Flowers raises the following claims for the first time in his COA pleadings: (1) his rights under the Confrontation Clause were violated when a law enforcement officer's body camera video was played for the jury; (2) he was entitled to a jury instruction regarding the voluntariness of his statements made on the body camera video; (3) his trial counsel was ineffective for failing to seek admission of a protective order at

No. 24-10486

trial; and (4) the state habeas court erred by failing to conduct an evidentiary hearing. Because Flowers did not raise these claims in his § 2254 proceedings, this court lacks jurisdiction to consider them. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018).

A COA may issue only if the applicant has made “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). When the district court denies relief on the merits, an applicant must show that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When the district court denies relief on procedural grounds, a COA should issue if an applicant establishes, at least, that jurists of reason would find it debatable whether the application states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *Id.*

Flowers fails to meet the requisite standard. *See id.* His motion for a COA is DENIED. His motion for the appointment of counsel is likewise DENIED.

As Flowers fails to make the required showing for a COA, we do not reach the issue whether the district court erred by denying his motions for an evidentiary hearing and for discovery. *See United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020).