

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-30670



A True Copy
Certified order issued Dec 28, 2018

Steph W. Coyle
Clerk, U.S. Court of Appeals, Fifth Circuit

LOUIE M. SCHEXNAYDER, JR.,

Plaintiff-Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Defendant-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana

ORDER:

Louie M. Schexnayder, Jr., Louisiana prisoner # 108097, was convicted of second degree murder and sentenced to a term of life imprisonment at hard labor without the possibility of parole. Schexnayder now seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 petition. He argues that his right to federal due process was violated by the trial judge's failure to recuse himself, an argument raised for the first time in his COA application, and that this court should review his case for plain error.

In evaluating a COA application, this court does not decide the ultimate merits of the claims but determines only whether the movant has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). This standard is satisfied "by demonstrating that jurists of reason could disagree with the

APPENDIX

A

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*, 537 U.S. at 327. This court need not consider claims raised for the first time in a COA application. See *Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003).

Schexnayder has not made the requisite showing. Accordingly, his application for a COA is DENIED. His motion for appointment of counsel is DENIED as moot.



ANDREW S. OLDHAM
UNITED STATES CIRCUIT JUDGE