

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 13-15647  
Non-Argument Calendar

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D.C. Docket No. 1:10-cv-00067-CG-C

PATRICK JOSEPPH CHAREST,

Petitioner - Appellant,

versus

BILLY MITCHEM,

Respondent - Appellee.

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Appeal from the United States District Court  
for the Southern District of Alabama

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(February 13, 2015)

Before HULL, MARTIN, and FAY, Circuit Judges.

PER CURIAM:

Patrick Joseph Charest, proceeding pro se, appeals the district court's order dismissing his 28 U.S.C. § 2254 petition on jurisdictional grounds and, in the

alternative, denying it as an abuse of the writ and untimely. The district court granted a certificate of appealability on the following question:

Whether Charest's current habeas petition was a second or successive petition and subject to dismissal for lack of jurisdiction, or whether his 2005 sentence modification did not constitute a new and intervening judgment which, pursuant to Magwood v. Patterson, 561 U.S. 320, 130 S. Ct. 2788 (2010), would restart the one-year period for filing a habeas petition.

We conclude that this COA was improvidently granted because it fails to indicate that jurists of reason would find Charest's underlying jurisdictional arguments debatable, insofar as he needed to make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000). We therefore vacate the COA and remand to the district court to consider whether Charest has made a substantial showing of the denial of a constitutional right, in conformity with Slack. See Spencer v. United States, No.10-10676, \_\_\_ F.3d \_\_\_, \_\_\_, 2014 WL 6234529, at \*4 (11th Cir. Nov. 14, 2014) (en banc) ("Going forward, a certificate of appealability, whether issued by this Court or a district court, must specify what constitutional issue jurists of reason would find debatable. . . . A failure to specify that issue would violate the text enacted by Congress . . . and will result in the vacatur of the certificate.").

The certificate of appealability is **VACATED**, and the case is **REMANDED**.