

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 17-70002

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United States Court of Appeals  
Fifth Circuit

**FILED**

June 7, 2018

Lyle W. Cayce  
Clerk

ANDRE LEE THOMAS,

Petitioner - Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:09-CV-644

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Before JONES, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:\*

Andre Lee Thomas, a Texas state prisoner, was convicted of capital murder and sentenced to death. The district court denied his Section 2254 petition and also denied him a Certificate of Appealability (“COA”). Here he moves for a COA on five issues: (1) whether the jury composition was tainted by racial bias and whether defense counsel was ineffective for failing to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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question the allegedly biased jurors; (2) whether defense counsel was ineffective for not investigating Thomas's competency to stand trial; (3) whether defense counsel was ineffective in rebutting the State's voluntary-intoxication theory; (4) whether defense counsel was ineffective in presenting a mitigation defense in the penalty phase; and (5) whether execution of the severely mentally ill violates the Eighth Amendment.

Without expressing any view on the merits, we conclude that reasonable jurists could disagree about the resolution of the first four issues. Therefore, we grant a COA on those issues. We deny a COA on the issue of whether execution of the severely mentally ill violates the Eighth Amendment. This issue is foreclosed under our precedent.

The Clerk's Office will set a briefing schedule.

Motion for COA GRANTED IN PART AND DENIED IN PART.