

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 11-10069  
\_\_\_\_\_

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT  
JANUARY 13, 2011  
JOHN LEY  
CLERK

D.C. Docket No. 5:02-cv-00524-KOB-JEO

LEROY WHITE,

Petitioner - Appellant,

versus

CHARLIE JONES,  
Warden,  
ATTORNEY GENERAL, STATE OF ALABAMA,  
COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,

Respondents - Appellees.

\_\_\_\_\_  
Appeal from the United States District Court  
for the Northern District of Alabama  
\_\_\_\_\_

Before EDMONDSON, HULL and WILSON, Circuit Judges.

BY THE COURT:

Alabama death row inmate Leroy White has moved this Court for a certificate of appealability (“COA”) to review the district court’s denial of his

Federal Rule of Civil Procedure 60(b) motion for relief from the district court's judgment denying White's 28 U.S.C. § 2254 petition for a writ of habeas corpus.

We deny White's motion for a COA as unripe because he has not filed a motion for a COA in the district court first and obtained a ruling from the district court. See United States v. Futch, 518 F.3d 887, 894 n.1 (11th Cir. 2008)

("District courts must consider and rule upon the propriety of issuing the COA first, that is, before a request for a COA will be received or acted on by this court or a judge of this court.").

Alternatively, we deny the motion for a COA in the reasons outlined in our order denying White's second motion for a stay of execution.

**MOTION DENIED.**

**WILSON, Circuit Judge, dissenting:**

I dissent from the Court's denial of the motion for a COA for the reasons outlined in my dissent from the order denying White's second motion for a stay of execution.