

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

United States Court of Appeals
Fifth Circuit

FILED

April 3, 2020

Lyle W. Cayce
Clerk

No. 18-11464

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

JOESEPHIS AUSTIN,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 3:16-CV-3420

Before SMITH, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Joesephis Austin, federal prisoner #45524-177, was convicted of conspiracy to distribute controlled substances unlawfully. Without holding the evidentiary hearing that Austin requested, the district court denied his 28 U.S.C. § 2255 motion in part on the merits and in part as procedurally defaulted.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 18-11464

Austin moves for a certificate of appealability (“COA”) to challenge that denial.

Austin asserts that trial counsel was ineffective for failing to obtain documents from former trial counsel, that trial counsel was ineffective for advising Austin to sign a waiver of his right to file a 18 U.S.C. § 3582(c) motion, and that the prosecution acted improperly by presenting false testimony and suppressing exculpatory evidence. Austin also contends that the district court erred in denying his § 2255 motion without conducting an evidentiary hearing. The other claims raised in the district court are abandoned. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

To obtain a COA, Austin must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). If the district court denies relief on the merits, the prisoner must show that jurists of reason would debate whether the petition should have been resolved in a different manner or that the issues presented deserve encouragement to proceed further. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack*, 529 U.S. at 484. If the court denies relief on procedural grounds, the prisoner must show “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484.

Austin has failed to make the showing necessary to obtain a COA. The motion for a COA is DENIED.

We construe Austin’s motion for a COA with respect to the denial of an evidentiary hearing as a direct appeal of that issue. *See Norman v. Stephens*, 817 F.3d 226, 234 (5th Cir. 2016). That order is AFFIRMED.