

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

No. 18-20734

United States Court of Appeals
Fifth Circuit

FILED

February 11, 2020

GLEN DALE CARTER,

Lyle W. Cayce
Clerk

Petitioner-Appellant

v.

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

Respondent-Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CV-2514

Before SMITH, COSTA and HO, Circuit Judges.

PER CURIAM:*

Glen Dale Carter, Texas prisoner # 1972804, was convicted by a jury on two counts of aggravated robbery with a deadly weapon and was sentenced to two concurrent 45-year prison terms. The district court denied Carter's 28 U.S.C. § 2254 application on summary judgment. Carter now moves for a certificate of appealability (COA), as well as a hearing in this court on his

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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objection to the substitution of State's counsel and on his request for release on a personal recognizance bond.

A prisoner seeking a COA must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The COA applicant must demonstrate “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks and citation omitted). Where a district court has rejected the constitutional claims on the merits, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* On the other hand, when the district court has denied relief based on procedural grounds, a COA should be granted “when the prisoner shows, at least, 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.” *Id.*

Carter has failed to make the requisite showing for issuance of a COA with respect to his claims that: his due process rights were violated because his state habeas application was denied without a sufficient statement of reasons; the evidence was insufficient to support his convictions; the trial court erred in admitting DNA evidence that was illegally obtained from him; his trial counsel rendered ineffective assistance by failing to move for the suppression of the DNA evidence illegally obtained from him; and his appellate counsel rendered ineffective assistance by failing to challenge the trial court’s admission of the DNA evidence or his trial counsel’s ineffectiveness in failing to move for the suppression of the DNA evidence. *See id.* We construe Carter’s

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request for a COA with respect to the district court's denial of an evidentiary hearing as a direct appeal of that issue, *see Norman v. Stephens*, 817 F.3d 226, 234 (5th Cir. 2016), and affirm, *see Cullen v. Pinholster*, 563 U.S. 170, 185 (2011); *McDonald v. Johnson*, 139 F.3d 1056, 1059-60 (5th Cir. 1998). Finally, Carter's motion for a hearing in this court is denied.

MOTIONS DENIED; AFFIRMED.