

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

\_\_\_\_\_  
No. 19-10225  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

May 5, 2020

Lyle W. Cayce  
Clerk

JOE LEWIS,

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 Northern District of Texas  
USDC No. 3:17-CV-2745  
\_\_\_\_\_

Before SMITH, COSTA, and HO, Circuit Judges.

PER CURIAM:\*

Joe Lewis, Texas prisoner # 01975017, moves for a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 petition. We construe his challenge to the district court's tacit refusal to conduct an evidentiary hearing as an appeal of that issue. *See Norman v. Stephens*, 817 F.3d 226, 234 (5th Cir. 2016). A jury convicted Lewis of drug crimes, and he was sentenced to 30 years in prison.

\_\_\_\_\_  
\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 19-10225

We decline to consider Lewis’s claim that appellate counsel was ineffective because Lewis intentionally declined to raise that claim in his § 2254 petition. *See Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003). As to the contention that trial counsel was ineffective for failing to investigate an insanity defense and to call a psychiatrist to support that defense, Lewis fails to “demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). He thus fails to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). His motion for a COA is DENIED. The denial of an evidentiary hearing is AFFIRMED.