

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 9, 2021

Lyle W. Cayce
Clerk

No. 20-10731

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BENNY DENNIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:17-CV-2

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

Benny Dennis, federal prisoner number # 48551-177, applies for a certificate of appealability (COA) following the district court's denial of his 28 U.S.C. § 2255 motion, wherein he sought to challenge his conviction on one count of possession with intent to distribute methamphetamine. Dennis argues that his guilty plea was not knowingly and voluntarily entered due to

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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ineffective assistance of counsel, and that the district court failed to hold an evidentiary hearing.

To obtain a COA, a defendant must first make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When, as here, the district court denies a COA on the merits, the movant must 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). Dennis has made no such showing. Accordingly, his motion for a COA is DENIED. Dennis’s motion for the appointment of counsel is also DENIED.

As Dennis fails to make the required showing for a COA on his constitutional claim, “we have no power to say anything about his request for an evidentiary hearing.” *United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020), *petition for cert. filed* (U.S. Mar. 18, 2021) (No. 20-7553).