



IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

A True Copy
Certified order issued May 07, 2019

Lytle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 18-10566

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KURTIS KEITH LOWE,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas

O R D E R:

Kurtis Keith Lowe, federal prisoner # 97480-871, seeks a certificate of appealability (COA) to appeal the time-bar dismissal of his 28 U.S.C. § 2255 motion challenging his guilty plea conviction and 60-month prison sentence for conspiracy to commit mail fraud. Lowe seeks a COA in connection with his claims that counsel misinformed him about the Speedy Trial Act, counsel had a conflict of interest, the district court judge should have recused himself, and the Government was required to show that it had complied with the Constitution's Appointment Clause.

A COA will issue if Lowe makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). If the district court denies a § 2255 motion on procedural grounds, as happened in Lowe's case, a COA will issue "when the prisoner

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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.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). If “a plain procedural bar is present and the district court is correct to invoke it,” no jurist of reason would conclude that the movant “should be allowed to proceed further,” as an appeal is unwarranted in such circumstances. *Id.* Conclusory assertions form no basis for § 2255 relief. *Ross v. Estelle*, 694 F.2d 1008, 1012 (5th Cir. 1983). Matters raised for the first time in a COA application filed in this court are not considered. *Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003).

Because reasonable jurists would not debate whether the district court’s procedural ruling was correct, a COA is DENIED. *See Slack*, 529 U.S. at 484.

/s/Jennifer Walker Elrod
JENNIFER WALKER ELROD
UNITED STATES CIRCUIT JUDGE

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