

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-10960



A True Copy
Certified order issued Mar 18, 2019

JAMES DESTRY HAMM,

Tyler W. Cayer
Clerk, U.S. Court of Appeals, Fifth Circuit

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

ORDER:

James Destry Hamm, Texas prisoner # 1902108, was convicted by a jury of stalking and was sentenced to six years in prison. He now seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 petition challenging this conviction. Hamm asserts that the trial court failed to properly instruct the jury as to all elements of the offense because it did not inform the jurors in the application paragraph that they must find that Hamm had engaged in conduct that he knew or reasonably believed the victim would consider as threatening bodily injury or death or that the victim was placed in fear specifically of bodily injury or death, rather than generic fear. In addition, he contends that the evidence was insufficient to support his conviction for stalking. Although Hamm notes, as he did in the district court,

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that he believes his conduct was protected by the First Amendment, he does not challenge the district court's conclusion that this claim was procedurally defaulted, and thus any such argument is abandoned. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

To obtain a COA, Hamm must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Because the district court rejected Hamm's claims on their merits, he "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack*, 529 U.S. at 484; *see also Miller-El*, 537 U.S. at 338. Hamm has failed to make the requisite showing. Accordingly, his motion for a COA is DENIED. Hamm's motion to expedite the appeal is DENIED as unnecessary.



JAMES C. HO
UNITED STATES CIRCUIT JUDGE