

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-20105



A True Copy
Certified order issued Oct 02, 2018

UNITED STATES OF AMERICA,

Plaintiff-Appellee

Jyl W. Guye
Clerk, U.S. Court of Appeals, Fifth Circuit

v.

KENTON DEON HARRELL, also known as Big Shakey,

Defendant-Appellant

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

ORDER:

Kenton Deon Harrell, federal prisoner # 39409-179, seeks a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his 135-month sentence for conspiracy to interfere with commerce by robbery. Harrell contends that his trial counsel rendered ineffective assistance in not negotiating a plea agreement given the strength of the Government's case. He further contends that the district court was obligated to appoint counsel and conduct an evidentiary hearing prior to ruling on his § 2255 motion.

This court will grant a COA, which is required to appeal, only when the movant "has made 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 a district court has denied the constitutional claims on the merits,

No. 18-20105

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).

Harrell has not made the requisite showing. *See Slack*, 529 U.S. at 484. We will not consider his newly raised claim that, but for counsel’s purported ineffectiveness, he would have pleaded guilty without a plea agreement. *See Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003). Harrell has abandoned the § 2255 claims he fails to raise before this court. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

COA DENIED.



JAMES C. HO
UNITED STATES CIRCUIT JUDGE