

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-10581



A True Copy
Certified order issued Apr 09, 2019
Steph W. Conner
Clerk, U.S. Court of Appeals, Fifth Circuit

WILLIAM ALAN KENNEDY,

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:

William Alan Kennedy, Texas prisoner # 01740869, was convicted of aggravated robbery with a deadly weapon. Kennedy moves this court for a certificate of appealability (COA) following the district court's dismissal of his 28 U.S.C. § 2254 petition.

A COA may be issued on a prisoner's claim "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a district court has rejected a constitutional claim on the merits, a COA will be granted only if the prisoner "demonstrate[s] that reasonable jurists would find the district court's assessment of the constitutional claim[] debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When a district court dismisses a claim on procedural grounds, the

prisoner must show “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.” *Id.*

Kennedy argues that the evidence was insufficient to support the deadly weapon finding. He also contends that that his due process rights were violated when the state court convicted him of using a deadly weapon without any proof that he knew or should have known that he was using a deadly weapon in the commission of the offense. Kennedy argues that this claim is not procedurally barred because he is actually innocent and because counsel rendered ineffective assistance. Finally, he argues that the Texas Penal Code § 1.07(a)(1), the statute that defines deadly weapon, is vague. Kennedy, however, has not made the requisite showing. *See Slack*, 529 U.S. at 484. Accordingly, Kennedy’s motion for COA is DENIED.



ANDREW S. OLDHAM
UNITED STATES CIRCUIT JUDGE