

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

\_\_\_\_\_  
No. 19-10176  
\_\_\_\_\_



A True Copy  
Certified order issued Nov 14, 2019

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

KEVIN DUANE TALKINGTON,

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:

Kevin Duane Talkington, Texas prisoner No. 01911091, seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 petition challenging his convictions on three counts of aggravated sexual assault of a child under age 14 and two counts of indecency. Talkington raised 16 issues in his § 2254 petition. The district court found that three of the issues, which challenged the indictment, were not exhausted in state court and were procedurally barred from review. The district court found that another three issues, which raised due process challenges based on the trial court's admission of evidence and allowance of improper closing argument, were not raised on direct appeal and were procedurally barred from review. The remaining issues of ineffective assistance of trial counsel,

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ineffective assistance of appellate counsel, improper jury instructions, and denial of fair trial due to cumulative error were denied on the merits.

To obtain a COA, Talkington must make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). Such a showing requires Talkington to “demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong” or that “the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks and citation omitted). When a district court has rejected a claim on procedural grounds, the applicant must show 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.*

Talkington has failed to address the district court’s findings on procedural bar and has abandoned all the issues found to be procedurally barred. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987) *see also Hughes v. Johnson*, 191 F.3d 607, 614 (5th Cir. 1999). Talkington has not made the requisite showing with respect to any issue denied on the merits. Accordingly, his motion for a COA is DENIED.

/s/ Leslie H. Southwick  
LESLIE H. SOUTHWICK  
UNITED STATES CIRCUIT JUDGE