

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-50084

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v. _____

BENITO MARTINEZ, JR., also known as Benny,

Defendant-Appellant

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

O R D E R:

Benito Martinez, Jr., federal prisoner # 61747-801, moves this court for a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2255 motion in which he challenged his conviction of one count of conspiracy to possess with intent to distribute five kilograms or more of cocaine and two counts of possession with intent to distribute five kilograms or more of cocaine and aiding and abetting. If granted a COA, Martinez would argue that his trial and appellate counsel were ineffective, that his due process rights were violated by the admission of wiretap recordings, and that the district court abused its discretion by denying his motions for an evidentiary hearing and for recusal or change of venue.

To obtain a COA, a prisoner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529

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U.S. 473, 483-84 (2000). A movant satisfies the COA 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.” See *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). If the district court has rejected claims on their merits, the movant 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.

Martinez has failed to make the requisite showing. Consequently, his motion for a COA is DENIED.

/s/ James E. Graves, Jr.

JAMES E. GRAVES, JR.
UNITED STATES CIRCUIT JUDGE