

APPÉNDIX

(A — E)

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 08, 2020

Ms. Carol L. Michel
U.S. District Court, Eastern District of Louisiana
500 Poydras Street
Room C-151
New Orleans, LA 70130

No. 19-30660 USA v. Cyrus Casby
USDC No. 2:18-CV-6261

Dear Ms. Michel,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Majella A. Sutton, Deputy Clerk
504-310-7680

cc:

Mr. Kevin G. Boitmann
Mr. Cyrus Casby
Ms. Diane Hollenshead Copes
Mr. Gregory Martin Kennedy
Mr. Maurice Edwin Landrieu

(APPENDIX A)

United States Court of Appeals for the Fifth Circuit



No. 19-30660

A True Copy
Certified order issued Sep 08, 2020

UNITED STATES OF AMERICA,

Tyke W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Plaintiff—Appellee,

versus

CYRUS CASBY,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:18-CV-6261
USDC No. 2:11-CR-130-1

ORDER:

Cyrus Casby, federal prisoner # 18881-078, moves for a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2255 motion challenging his conviction for arson that resulted in the death of two individuals and caused the injuries of three other individuals. Casby contends that (1) his counsel was ineffective because he did not object to the qualifications of the DNA analyst or make objections to defects in the DNA evidence; he did not challenge the sufficiency of the evidence and stipulated to the interstate commerce element; he violated his conditional admission contract by failing alcohol and drug tests and his subsequent counsel failed to

request a continuance to investigate his prior counsel's errors; and he failed to call various experts and other witnesses, failed to present evidence of other motives, hugged a prosecution witness, and did not adequately cross-examine certain witnesses; and (2) the district court erred in dismissing his remaining claims as procedurally barred and erred in not addressing these claims on the merits.

For the first time in his COA motion, Casby maintains that this court was wrong to deny his direct appeal based on an incorrect view of the law and facts. This court lacks jurisdiction to consider this claim. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018), *cert. denied*, 140 S. Ct. 859 (2020).

To obtain a COA, Casby must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). If the district court denies relief on the merits, the movant must establish that reasonable jurists would find the district court's assessment of the claims debatable or wrong, *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), or that the issues "are adequate to deserve encouragement to proceed further," *Miller-El*, 537 U.S. at 336. If relief is denied on procedural grounds, a COA should issue if the movant demonstrates, at least, that jurists of reason would find it debatable whether the motion "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." *Slack*, 529 U.S. at 484. Casby has not made such a showing concerning the above claims. Accordingly, Casby's COA motion is DENIED. His motion for judicial notice is also DENIED.



STUART KYLE DUNCAN
United States Circuit Judge

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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September 08, 2020

Ms. Carol L. Michel
U.S. District Court, Eastern District of Louisiana
500 Poydras Street
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New Orleans, LA 70130

No. 19-30660 USA v. Cyrus Casby
USDC No. 2:18-CV-6261

Dear Ms. Michel,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Majella A. Sutton, Deputy Clerk
504-310-7680

CC:

Mr. Kevin G. Boitmann
Mr. Cyrus Casby
Ms. Diane Hollenshead Copes
Mr. Gregory Martin Kennedy
Mr. Maurice Edwin Landrieu

United States Court of Appeals
for the Fifth Circuit

No. 19-30660

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CYRUS CASBY,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:18-CV-6261

ORDER:

On October 28, 2020, the clerk took no action on appellant's petition for rehearing/rehearing en banc. Upon consideration of appellant's motion for reconsideration, IT IS ORDERED that the motion is DENIED.



STUART KYLE DUNCAN
United States Circuit Judge

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

November 19, 2020

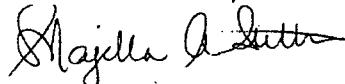
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 19-30660 USA v. Cyrus Casby
USDC No. 2:18-CV-6261

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Majella A. Sutton, Deputy Clerk
504-310-7680

Mr. Kevin G. Boitmann
Mr. Cyrus Casby
Ms. Diane Hollenshead Copes
Mr. Gregory Martin Kennedy
Mr. Maurice Edwin Landrieu
Ms. Carol L. Michel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANAUNITED STATES OF AMERICA
VERSUS
CYRUS CASBYCRIMINAL ACTION
NO. 11-0130
SECTION "L" (2)ORDER AND REASONS

Before the Court is Petitioner Cyrus Casby's Motion for a Certificate of Appealability, R. Doc. 407, regarding the Court's Order denying Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255, R. Docs. 398, 403. After considering the record and the applicable law, the Court now rules as follows.

I. BACKGROUND

In June 2018, Petitioner Cyrus Casby, a federal prisoner proceeding *pro se*, moved this Court to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255.¹ R. Doc. 388. The Government opposed the motion, R. Doc. 396. On December 17, 2018, the Court denied eleven of Casby's twelve claims, holding Casby's third claim in abeyance pending the Supreme Court's ruling in *Gamble v. United States*, 139 S.Ct. 1960 (2019). R. Doc. 398. On June 24, 2019, in accordance with the Supreme Court's June 17, 2019 holding in *Gamble*, the Court denied Casby's remaining Double Jeopardy Claim. R. Doc. 403. In response to the Court's denial of his § 2255 motion, Petitioner requests a certificate of appealability. R. Doc. 407.

II. PRESENT MOTION

Petitioner asks this Court to grant a certificate of appealability on because he alleges the Court's denial of his § 2255 motion "demonstrates substantial constitutional violations." R. Doc.

¹ See R. Doc. 398 for a full description of the background in this case.

407 at 1. Throughout his request, Petitioner repeatedly contends the Court violated his due process rights by "partially answering each claim/merit [in the § 2255 motion] . . . thus failing to exercise choice in a situation calling for choice, which is an abuse of discretion." R. Doc. 407 at 2. In his motion, Petitioner alleges eleven grounds mirroring the claims raised in his two-hundred page § 2255 motion. R. Doc. 388. Further, Petitioner alleges the Court abused its discretion by ignoring and/or "basically refus[ing] to rule" on numerous claims in his § 2255 motion. As he did in his § 2255 motion, Petitioner again alleges ineffective assistance of counsel throughout many of his claims. For instance, Petitioner's ninth ground states "my trial lawyers [sic] incompetence prejudiced me below the Strickland standard." R. Doc. 407 at 13.

III. APPLICABLE LAW

"Unless a circuit justice or judge issues a certificate of appealability," a petitioner may not appeal a "final order in a proceeding under section 2255." 28 U.S.C. § 2253(c)(1)(A). Appellate review of a § 2255 final order is limited to only those issues on which a certificate of appealability is granted. *Lackey v. Johnson*, 116 F.3d 149, 151 (5th Cir. 1997).

- (1) The Court shall issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Moore v. Quartermar*, 517 F.3d 781, 783 (5th Cir. 2008). When the district court has rejected a petitioner's claims on procedural grounds without reaching the underlying constitutional claim(s), the petitioner 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." *Slack v. McDaniel*, 529 U.S. 473, 474 (2000). When the district court rejects a § 2255 motion on its

constitutional merits, the petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* at 484.

IV. DISCUSSION

In support of his request for certificate of appealability, Petitioner Casby argues the Court abused its discretion by partially ruling on and/or "ignoring" arguments in Petitioner's § 2255 motion. R. Doc. 407 at 2, 7, 13. Petitioner repeatedly cites *Cooter & Gell v. Hartman Corp.*, 496 U.S. 384, 402 (1990), for the contention that the Court's "failure to exercise choice in a situation calling for choice is an abuse of discretion." R. Doc. 407 at 7, 9, 14, 17. Petitioner's argument, however, is without merit. Notably, the Supreme Court in *Cooter & Gell* addressed an entirely distinct and separate issue—namely, the interpretation of Federal Rule of Civil Procedure 11. *See* 496 U.S. 384. Moreover, the quote cited and depended upon by Petitioner is nowhere to be found in the text of the *Cooter & Gell* decision. *See id.* Further, Petitioner's allegation that the Court engaged in an "abuse of discretion" fails to demonstrate a "substantial showing of the denial of a constitutional right" as is required to grant a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2).

In support of his request for a certificate of appealability, Petitioner restates and summarizes the arguments presented in his § 2255 motion. The issues raised in Petitioner's § 2255 motion, however, were carefully considered by this Court in its Orders denying Petitioner's motion to vacate, set aside, or correct sentence. *See* R. Docs. 398, 403. Accordingly, for the reasons stated above and set out in the Court's previously issued Orders, R. Docs. 398, 403, the Court finds that Petitioner has failed to make a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253. Moreover, the Court concludes "reasonable jurists" would not debate this Court's findings. *See* 529 U.S. 473, 484.

V. CONCLUSION

The Court concludes Petitioner Casby has failed to demonstrate that he is entitled to a certificate of appealability. Accordingly,

IT IS ORDERED that Defendant Cyrus Casby's Motion for a Certificate of Appealability, R. Doc. 407, is hereby **DENIED**.

New Orleans, Louisiana, this 19th day of August, 2019.


UNITED STATES DISTRICT JUDGE

United States Court of Appeals
for the Fifth Circuit

No. 19-30660

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CYRUS CASBY,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:18-CV-6261

ORDER:

On October 28, 2020, the clerk took no action on appellant's petition for rehearing/rehearing en banc. Upon consideration of appellant's motion for reconsideration, IT IS ORDERED that the motion is DENIED.



STUART KYLE DUNCAN
United States Circuit Judge

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(APPENDIX C)

**Additional material
from this filing is
available in the
Clerk's Office.**