

United States Court of Appeals
for the Fifth Circuit

No. 20-50251

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LARRY WAYNE KIMES, *also known as* LARRY W. KIMES,

Defendant—Appellant.

Application for Certificate of Appealability from the
United States District Court for the Western District of Texas
USDC No. 5:12-CR-886-2
USDC No. 5:16-CV-716

Before JONES, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

This panel previously DENIED appellant's motion for a certificate of appealability. The panel has considered appellant's motion for reconsideration.

IT IS ORDERED that the motion is DENIED.

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FILED

September 20, 2021

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Lyle W. Cayce
Clerk

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Before JONES, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

Larry Wayne Kimes, federal prisoner # 45087-177, has applied for a certificate of appealability (COA) and for leave to proceed in forma pauperis (IFP) in this appeal from the denial in part and dismissal in part of his motion under Rule 60(b) of the Federal Rules of Civil Procedure requesting reconsideration of the district court's order denying his motion under 28 U.S.C. § 2255 challenging his convictions for conspiracy to engage in tax fraud and conspiracy to commit mail fraud. In denying the Rule 60(b) motion, the district court concluded in part that Kimes had failed to show

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that it committed a procedural error in denying the § 2255 motion. To the extent that Kimes requested reconsideration on the merits or asserted new claims, the district court concluded in part that it lacked jurisdiction because Kimes had asserted claims that were successive and unauthorized.

To obtain a COA, Kimes must show “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.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). As to claims rejected on their merits, Kimes “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). To the extent that a claim was dismissed on procedural grounds, Kimes must show “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.” *Id.* Kimes has not made the requisite showing, and his request for a COA is DENIED.

As Kimes fails to make the required showing for a COA, we do not reach whether the district court erred by denying an evidentiary hearing. *See United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020), *petition for cert. filed* (U.S. Mar. 18, 2021) (No. 20-7553). Leave to proceed IFP on appeal is also DENIED.