

United States Court of Appeals
for the Fifth Circuit



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Attest: *Lyle W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 21-30677

United States Court of Appeals
Fifth Circuit

FILED

August 31, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

FRANKIE MALDONADO,

Defendant—Appellant.

Application for Certificate of Appealability from the
United States District Court for the Western District of Louisiana
USDC No. 1:14-CR-207-1, USDC No. 1:19-CV-1119

ORDER:

Frankie Maldonado, federal prisoner # 27856-171, seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2255 motion challenging his convictions of two counts of producing child pornography and one count of traveling in interstate commerce for the purpose of engaging in sexual conduct with a minor. Maldonado argues that the Government knowingly presented false testimony by the alleged minor victim (MV) and its expert witness on cellular technology and GPS technology. He further asserts that defense counsel was ineffective for failing to obtain a defense expert in those scientific fields and by failing to impeach MV. The district court denied Maldonado's prosecutorial misconduct

No. 21-30677

claims on procedural grounds and alternatively on the merits, and it denied his ineffective assistance claims on the merits.

Maldonado does not renew his claims that counsel was ineffective for failing to file a motion to suppress the content recovered from MV's phone and failing to challenge the procedural and substantive reasonableness of his sentence. Nor does he meaningfully brief any challenge to the sufficiency of the evidence, which was rejected by the district court. Those claims are therefore deemed abandoned. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999). Because Maldonado did not assert in the district court his claims that (1) prosecutors used false and inflammatory language during opening and closing arguments, in violation of *Darden v. Wainwright*, 477 U.S. 168 (1986); (2) counsel was ineffective for failing to object to the Government's failure to introduce copies of text messages that contained sexually suggestive conversations between him and MV and a photograph of his genitals; and (3) counsel was ineffective for failing to use his readily available cell phone records to impeach MV and discredit the Government's evidence, the court does not consider them. *See Henderson v. Cockerell*, 333 F.3d 592, 605 (5th Cir. 2003); *Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018).

A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the prisoner must demonstrate "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. Cockerell*, 537 U.S. 322, 327 (2003). When the district court's denial is on the merits, "[t]he [prisoner] 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). When the district court's denial is based on a procedural ruling, the prisoner must demonstrate that "jurists of

No. 21-30677

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.*

Because reasonable jurists would not debate the district court’s denial of the prosecutorial misconduct and ineffective assistance of counsel claims for which he seeks a COA on the merits, Maldonado’s motion for a COA is DENIED. *See Slack, 529 U.S. at 484.*

/s/ Catharina Haynes
CATHARINA HAYNES
United States Circuit Judge