

United States Court of Appeals
for the Fifth Circuit

No. 21-30775

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOHN HOMER LEGROS, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:21-CV-458

ON PETITION FOR REHEARING EN BANC

Before STEWART, DENNIS, and WILLETT, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R. 35 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

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FILED

September 20, 2022

Lyle W. Cayce
Clerk

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UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOHN HOMER LEGROS, JR.,

Defendant—Appellant.

Application for Certificate of Appealability from the
United States District Court for the Western District of Louisiana
USDC Nos. 2:21-CV-458, No. 2:18-CR-223-1

ORDER:

John Homer Legros, Jr., federal prisoner # 20728-035, was convicted of conspiracy to distribute and to possess with intent to distribute a controlled substance and sentenced to 144 months of imprisonment. He filed a 28 U.S.C. § 2255 motion challenging this conviction and sentence. The district court denied the § 2255 motion and his Federal Rule of Civil Procedure 59(e) motion. He now moves this court for a certificate of appealability (COA). Legros contends that he was erroneously sentenced as a career offender under U.S.S.G. § 4B1.1 and U.S.S.G. § 4B1.2 and that his counsel was ineffective for failing to object to his career offender designation. He also requests authorization to proceed in forma pauperis (IFP) on appeal.

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As a preliminary matter, Legros does not brief, and therefore abandons, any challenge to the district court's rejection of his claim that counsel was ineffective for failing to insist that the district court correct the presentence report. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

A prisoner will receive a COA only if he "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). One "satisfies this 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." *Miller-El*, 537 U.S. at 327. Legros has not met this standard. *See id.* His COA motion is DENIED. His IFP motion is likewise DENIED.

/s/ Don R. Willett

DON R. WILLETT
United States Circuit Judge