

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 25, 2022

Lyle W. Cayce
Clerk

No. 22-10330

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

SCOTT LYNN FISHBEIN,

Defendant—Appellant.

Application for Certificate of Appealability from the
United States District Court for the Northern District of Texas
USDC No. 4:21-CV-1005
USDC No. 4:20-CR-84-1

ORDER:

Scott Lynn Fishbein, federal prisoner # 60244-177, moves this court for a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. Fishbein filed the motion to challenge his 151-month sentence for enticement of a child. Fishbein raises claims of ineffective assistance of counsel, prosecutorial misconduct, and errors on the part of the sentencing court.

To obtain a COA, Fishbein must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Where a district court has rejected a claim on the

merits, a 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. When, as here, a district court denies relief on procedural grounds and on the merits, the movant must show that jurists of reason could debate the validity of the procedural ruling and the validity of the merits ruling. *See id.*; *Cardenas v. Stephens*, 820 F.3d 197, 201 (5th Cir. 2016).

Fishbein has failed to make the requisite showing. He abandons the claims he does not raise in his COA motion, *Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999), and we do not consider his newly raised claims. *See Roberts v. Cockrell*, 319 F.3d 690, 695 (5th Cir. 2003); *Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003); *Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018).

Accordingly, Fishbein’s motion for a COA is DENIED.



STUART KYLE DUNCAN
United States Circuit Judge