

United States Court of Appeals
for the Fifth Circuit

No. 23-10379

United States Court of Appeals
Fifth Circuit

FILED

September 19, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CHRISTOPHER JAMES REGAN,

Defendant—Appellant.

Application for Certificate of Appealability
The United States District Court
for the Northern District of Texas
USDC No. 1:22-CV-37
USDC No. 1:19-CR-21-2

ORDER:

Christopher Regan, federal prisoner #28400-078, seeks a certificate of appealability (“COA”) to appeal the denial of his 28 U.S.C. § 2255 motion challenging his conviction of one count of conspiracy to produce child pornography and two counts of production of child pornography. Regan contends that (i) his indictment was multiplicitous and violated his rights under principles of double jeopardy; (ii) his Fifth Amendment right against self-incrimination was violated when his Tumblr account was illegally searched by a coworker; (iii) his Fourth Amendment rights were violated in connection

No. 23-10379

with the search of his Google and Tumblr accounts and the warrant issued in connection with the search of his home and Tumblr account; and (iv) he received ineffective assistance of counsel.

As a preliminary matter, Regan fails meaningfully to challenge the procedural dismissal of the Fourth Amendment claims he raised in his § 2255 motion. His failure to do so results in the abandonment of those claims. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

Additionally, he abandons, for failure to brief, his claims that his trial counsel was ineffective for forcing him to sign the plea agreement and his appellate counsel was ineffective for failing to withdraw and disclose a conflict of interest and failing to raise certain Fourth Amendment arguments on appeal. *See id.* Moreover, in his COA pleadings, Regan raises new Fourth Amendment challenges that this court lacks jurisdiction to consider. *See Black v. Davis*, 902 F.3d 541, 545–46 (5th Cir. 2018).

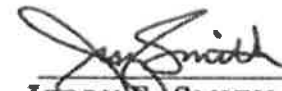
Finally, this court lacks jurisdiction to consider the following claims that Regan raises for the first time in his COA pleadings: (a) His indictment was multiplicitous; (b) his Fifth Amendment right against self-incrimination was violated; and (c) he received ineffective assistance when his trial counsel failed to make several arguments in support of and investigate the circumstances surrounding his suppression motion and failed to seek the dismissal of certain of his charges based on multiplicity. *See id.*

To obtain a COA, Regan must make “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). Where the district court denies relief on the merits, an applicant must show 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). Where the district court denies relief on procedural grounds, a COA should issue if an applicant establishes,

No. 23-10379

at least, that jurists of reason would find it debatable whether the application states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *Id.*

Regan has failed to make the requisite showing. *See Slack*, 529 U.S. at 484. Therefore, a COA is DENIED.



JERRY E. SMITH
United States Circuit Judge