

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 8, 2010

Lyle W. Cayce
Clerk

No. 09-50910

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

STEVEN MCGARY CARROLL,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:09-CV-405
USDC No. 1:03-CR-275-4

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

In November 2005, Steven McGary Carroll, federal prisoner # 25236-056, was convicted by guilty plea of conspiracy to distribute more than five kilograms of cocaine and was sentenced to 240 months of imprisonment and five years of supervised release. We may not issue a COA unless Carroll makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483 (2000).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Carroll argues that his guilty plea was invalid, the district court should have conducted an evidentiary hearing before denying his § 2255 motion, and the district court erred by denying his motion for recusal. Because Carroll has not raised his claim alleging the ineffective assistance of his appellate counsel, Carroll has abandoned that claim. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999) (arguments not briefed in a COA motion are deemed abandoned).

Carroll has failed to make the requisite showing to warrant a COA. Accordingly, his request for a COA to appeal the denial of his § 2255 motion is denied. *See Slack*, 529 U.S. at 484.

We have previously held that a COA was not required to appeal the denial of a motion to recuse. *See Trevino v. Johnson*, 168 F.3d 173, 176-78 (5th Cir. 1999). Carroll's basis for seeking recusal was a claim that lacked merit. Accordingly, he has failed to show that the district court's denial of his motion for recusal was an abuse of discretion. *United States v. MMR Corp.*, 954 F.2d 1040, 1044 (5th Cir. 1992). Thus, the district court's judgment denying Carroll's motion to recuse is affirmed.

Carroll has also requested appointment of counsel to pursue this appeal. Because the interests of justice do not require appointment of counsel in this case, his request is denied. *See Schwander v. Blackburn*, 750 F.2d 494, 502 (5th Cir. 1985).

COA DENIED; REQUEST FOR APPOINTMENT OF COUNSEL DENIED; JUDGMENT AFFIRMED.