

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

No. 16-40207

United States Court of Appeals
Fifth Circuit

FILED

February 6, 2017

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff-Appellee

v.

ASTRIT BEKTESHI, also known as Ermir Muhamet Gonxhi, also known as Erimi Goxhaj, also known as Miri, also known as Billy,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:14-CV-105
USDC No. 4:09-CR-193-2

Before OWEN, ELROD, and COSTA, Circuit Judges.

PER CURIAM:*

Astrit Bekteshi, federal inmate # 41709-424, pleaded guilty to conspiring to distribute or possess with the intent to distribute cocaine, heroin, ecstasy, or marijuana and was sentenced to 135 months of imprisonment. Bekteshi seeks a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2255 motion.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 16-40207

An appeal may not be taken from a final order in a § 2255 proceeding unless a district court judge or circuit justice issues a COA. 28 U.S.C. § 2253(c)(1)(B). Bekteshi did not move for a COA in the district court, and the district court did not rule on whether to grant or deny him a COA. We assume without deciding that we therefore lack jurisdiction over this appeal pursuant to Rule 11(a) of the Rules Governing § 2255 Proceedings, which has language similar to former Rule 22 of the Federal Rules of Appellate Procedure. *See Cardenas v. Thaler*, 651 F.3d 442, 444-45 & n.1 (5th Cir. 2011).

We nevertheless decline to remand this case to the district court for a COA ruling because Bekteshi has not addressed, and has thus waived any challenge to, the district court's denial of his § 2255 motion on procedural grounds. *See United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000); *Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999); *see also United States v. Ajah*, 519 F. App'x 304, 305 (5th Cir. 2013). This appeal is DISMISSED for lack of jurisdiction, and Bekteshi's motion for a COA is DENIED as moot.