

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

No. 19-40225

United States Court of Appeals
Fifth Circuit

FILED

May 21, 2020

Lyle W. Cayce
Clerk

LARRY MICHAEL MAPLES,

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:17-CV-560

Before JONES, HIGGINSON, and OLDHAM, Circuit Judges.

PER CURIAM:*

Larry Michael Maples, Texas prisoner # 1965775, moves for a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 application challenging his conviction of capital murder. He contends that the district court erred by dismissing on the merits and without holding an evidentiary hearing on claims that (1) his trial counsel rendered ineffective assistance by (a) failing to hire a ballistics expert or a medical expert and (b) advising Maples

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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not to testify at trial, and (2) his trial and appellate counsel rendered ineffective assistance by failing to mount a defense based on sudden passion.

To obtain a COA with respect to the denial of a § 2254 application, a prisoner 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, 483 (2000). If a district court has rejected a claim on its merits, the petitioner “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. Maples fails to make the necessary showing. To the extent that he requests a COA regarding the district court’s denial of an evidentiary hearing, we construe his motion as a direct appeal of that issue, *see Norman v. Stephens*, 817 F.3d 226, 234 (5th Cir. 2016), and affirm. *See Cullen v. Pinholster*, 563 U.S. 170, 185-86 (2011).

Accordingly, Maples’s motion for a COA is DENIED, and the district court’s denial of an evidentiary hearing is AFFIRMED.