

U.S. DISTRICT COURT
 EASTERN DISTRICT OF LOUISIANA
 FILED
 MAY 24 2011
 LORETTA G. WHYTE
 CLERK

IN THE UNITED STATES COURT OF APPEALS
 FOR THE FIFTH CIRCUIT

No. 10-31225
 USDC No. 2:10-CV-787 -J

BARRY DIGGS,

Petitioner-Appellant

v.

ROBERT TANNER, Warden, Rayburn Correctional Center,

Respondent-Appellee

Appeal from the United States District Court
 for the Eastern District of Louisiana

ORDER:

Barry Diggs, Louisiana prisoner # 131445, seeks a certificate of appealability (COA) following the district court's dismissal of his 28 U.S.C. § 2254 petition in which he challenges his conviction for simple arson and the 20-year prison sentence the trial court imposed after adjudicating him a fourth felony offender. Diggs argues the merits of his claim and also argues that the district court erred in dismissing his petition on procedural grounds without reaching those merits.

To obtain a COA, Diggs must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). When a district court's denial of federal habeas relief is based exclusively upon procedural grounds, "a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the

Fee _____
 Process _____
 Filed _____
 Cir/Dep _____
 Doc. No. _____

No. 10-31225

petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Diggs has not met this standard. Accordingly, his motion for a COA is DENIED.

/s/ Jacques L. Wiener, Jr.

JACQUES L. WIENER, JR.
UNITED STATES CIRCUIT JUDGE

A true copy
Attest:

Clerk, U. S. Court of Appeals, Fifth Circuit

By

Deputy

18 MAY 2011