

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

United States of America,

Plaintiff,

v.

Case No. 10-20037-02-JWL

Randy Jay Dyke,

Defendant.

MEMORANDUM & ORDER

In July 2018, this court construed Mr. Dyke’s motion to correct plain error and a complete miscarriage of justice (doc. 419) as a successive § 2255 petition and it dismissed that motion for lack of jurisdiction because Mr. Dyke had not obtained authorization to file it. Mr. Dyke then sought to appeal the dismissal of his motion to the Tenth Circuit. The Circuit directed a limited remand to this court to determine whether to issue a certificate of appealability—an issue that the court inadvertently omitted from its memorandum and order.

“A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To satisfy this standard, the petitioner must demonstrate that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *See Saiz v. Ortiz*, 393 F.3d 1166, 1171 n.3 (10th Cir. 2004) (quoting *Tennard v. Dretke*, 542 U.S. 274, 282 (2004)). In addition, when the court’s ruling is based on procedural grounds, a petitioner must demonstrate that “jurists of reason would find it debatable whether the 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). Under this standard, the court declines to issue a certificate of appealability. Reasonable jurists could not debate the court’s decision to treat Mr. Dyke’s motion as an as an unauthorized second § 2255 motion and to dismiss that motion for lack of jurisdiction.

IT IS THEREFORE ORDERED BY THE COURT THAT a certificate of appealability is denied.

IT IS SO ORDERED.

Dated this 6th day of November, 2018, at Kansas City, Kansas.

s/John W. Lungstrum
John W. Lungstrum
United States District Judge