

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

**United States of America,**

**Plaintiff,**

**v.**

**Case No. 10-20037-01-JWL**

**Don Milton Steele,**

**Defendant.**

**MEMORANDUM & ORDER**

In August 2019, defendant Don Milton Steele filed a petition under 28 U.S.C. § 2255. Mr. Steele asserted that he was entitled to submit the petition under § 2255(f)(4) based on the Tenth Circuit's decision in *Madkins v. United States*, 866 F.3d 1136 (10th Cir. 2017). Because the motion was clearly successive and subject to the authorization requirements of § 2255(h), which Mr. Steele had not met, the court dismissed the petition for lack of jurisdiction. *See Prost v. Anderson*, 636 F.3d 578, 591 (10th Cir. 2011) (§ 2255(f) does not allow petitioner to evade § 2255(h)'s restrictions; rather, petitioner must meet both subsections' requirements). The court also denied a certificate of appealability.

Thereafter, Mr. Steele filed a motion for reconsideration of that order and, at the same time, appealed the court's order to the Tenth Circuit. The Circuit abated the appeal pending a resolution of the motion for reconsideration. The court denied the motion. The Circuit has now directed a limited remand to this court to determine whether to issue a certificate of appealability regarding the denial of the motion to reconsider.

“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 deny Mr. Steele’s motion for reconsideration of the court’s prior order treating Mr. Steele’s motion for relief from judgment 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** the court denies a certificate of appealability regarding the denial of Mr. Steele’s motion for reconsideration ,

**IT IS SO ORDERED.**

Dated this 10<sup>th</sup> day of October, 2019, at Kansas City, Kansas.

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