

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

**United States of America,**

**Plaintiff,**

**v.**

**Case No. 11-20020-01-JWL  
16-cv-2460-JWL**

**Abasi S. Baker,**

**Defendant.**

**MEMORANDUM & ORDER**

In March 2020, the court denied Mr. Baker’s § 2255 motion to vacate, set aside or correct his sentence. Mr. Baker then sought to appeal the denial 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 deny

Mr. Baker's petition in light of the fact that Hobbs Act robbery, under Tenth Circuit precedent, is categorically a crime of violence under the elements clause of § 924(c)(3)(A).

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

**IT IS SO ORDERED.**

Dated this 10<sup>th</sup> day of April, 2020, at Kansas City, Kansas.

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