

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

Vs.

No. 02-3385-SAC
01-40017-01-SAC

THOMAS JAMES KNOX,

Defendant.

MEMORANDUM AND ORDER

This case comes before the court on the defendant's application for issuance of a certificate of appealability. Dk. 75. An appeal from a final order in a proceeding under 28 U.S.C. § 2255 may not be taken unless a judge or circuit justice issues a certificate of appealability. 28 U.S.C. § 2253(c)(1). The certificate issues "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Defendant may make this showing by demonstrating that the issues he raises are debatable among jurists, that a court could resolve the issues differently, or that the questions presented deserve further proceedings. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

"Where a district court has rejected the constitutional claims on the

merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.” *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (quotation marks, alteration, and citation omitted). When the court denies a § 2255 motion on procedural grounds, the petitioner must show “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*, 529 U.S. at 478 (2000) (construing 28 U.S.C. § 2253(c)).

Defendant’s motion fails to allege which specific issues meet this showing, and instead, rehashes some of the many issues addressed at length by the court in resolving defendant’s § 2255 motion. These include the effectiveness of defendant’s counsel, the voluntariness of defendant’s plea, defendant’s standing to challenge a search, the legitimacy of certain police conduct, and statements made at defendant’s sentencing hearing.

In short, the defendant has failed to make any showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). Defendant has not demonstrated that the issues he raises are debatable among jurists, that a court could resolve the issues differently, or that the questions presented deserve further

proceedings. Merely repeating arguments made to the court in defendant's § 2255 motion and memorandum, referring the court to its § 2255 rulings and alleging they are in error falls far short of the mark.

IT IS THEREFORE ORDERED that the defendant is denied a certificate of appealability.

Dated this 16th day of August, 2005, Topeka, Kansas.

s/ Sam A. Crow

Sam A. Crow, U.S. District Senior Judge