

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CRIMINAL ACTION
v.)	
)	No. 02-20104-01-KHV
JORGE RIOS-GARCIA,)	
)	(Civil No. 05-3255-KHV)
Defendant.)	
_____)	

ORDER

On January 14, 2004, defendant pled guilty to one count of conspiracy to distribute more than five kilograms of cocaine and more than 50 kilograms of marijuana in violation of 21 U.S.C. § 846. On June 14, 2004, the Court sentenced defendant to 240 months in prison, the statutory minimum following the government's notice under 21 U.S.C. § 851. On December 8, 2005, the Court overruled defendant's motion to vacate his sentence under 28 U.S.C. § 2255. This matter is before the Court on defendant's Notice Of Appeal And Motion For "COA" Certificate Of Appealability Under 28 U.S.C. § 2253 And Rule 22(b) (Doc. #350) filed February 1, 2006.

The denial of a Section 2255 motion is not appealable unless the circuit justice or a circuit or district judge issues a certificate of appealability. See Fed. R. App. P. 22(b)(1); 28 U.S.C. § 2253(c)(1). "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 movant must demonstrate that his motion raises issues that are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. See Slack v. McDaniel, 529 U.S. 473,

483-84 (2000); United States v. Sistrunk, 111 F.3d 91, 91 (10th Cir. 1997). For reasons stated in the Court's Memorandum And Order (Doc. #349) filed December 8, 2005, the Court finds that defendant has not made a substantial showing of the denial of a constitutional right. Accordingly, his request for a certificate of appealability is overruled.

IT IS THEREFORE ORDERED that defendant's Notice Of Appeal And Motion For "COA" Certificate Of Appealability Under 28 U.S.C. § 2253 And Rule 22(b) (Doc. #350) filed February 1, 2006 be and hereby is **OVERRULED**. The Clerk is directed to docket defendant's notice of appeal as of February 1, 2006 and forward a copy of defendant's notice to the Tenth Circuit Court of Appeals.

Dated this 17th day of February, 2006, at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge