

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 05-3412-SAC  
02-40133-01-SAC

JOSE LOPEZ-GUZMAN,

Defendant.

MEMORANDUM AND ORDER

On January 5, 2006, this court denied defendant's motion to vacate sentence under 28 U.S.C. § 2255 and granted the government's motion to enforce the plea agreement. Dk. 88. Defendant then filed a notice of appeal from that order and moved this court for a certificate of appealability and for leave to appeal in forma pauperis. The case comes before the court on defendant's motions for a certificate of appealability and for leave to appeal in forma pauperis.

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)).

Petitioner recites the governing standards, but states nothing in support of his conclusory request for a certificate of appealability. In short, he has failed to show that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right or whether this court was

correct in its procedural ruling on his § 2255 motion.

The court additionally notes that defendant has filed a motion for leave to appeal in forma pauperis. Dk. 93. This motion is denied because defendant has not shown the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal. *See* 28 U.S.C.A. § 1915 (3) (“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.”)

IT IS THEREFORE ORDERED that defendant's motion for issuance of a certificate of appealability (Dk. 89) is denied.

IT IS FURTHER ORDERED that defendant's motion to appeal in forma pauperis (Dk. 93) is denied.

Dated this 9th day of March, 2006, Topeka, Kansas.

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