

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

HUNG LE,

Defendant.

Case No. 03-10132-JTM

Case No. 05-3306-JTM

MEMORANDUM AND ORDER

This matter is before the court on the defendant Hung T. Le's Request for Certificate of Appealability. On August 30, 2005, the court entered an Order denying Le's Motion to Vacate his sentence pursuant to 28 U.S.C. § 2255. Le's original § 2255 motion sought re-sentencing based on the United States Supreme Court's decision in *United States v. Booker*, 125 U.S. 738 (2005). The court found no basis for the relief sought, finding that Le had knowingly and voluntarily pled guilty to two counts of bank fraud, and specifically found that Le had knowingly and voluntarily waived his right to appeal or to collaterally attack his sentence. Le did not advance ineffective assistance of counsel as one of the grounds for relief in his § 2255 motion.

A certificate of appealability may issue if the applicant has made "a substantial showing of the denial of a constitutional right." See *Warnick v. Booher*, 425 F.3d 842 (10th Cir.2005) (*quoting* 28 U.S.C. § 2253(c)(2)). "Where a district court has rejected the constitutional claims on the merits," the prisoner "must demonstrate that reasonable jurists would find the district court's assessment of

the constitutional claims debatable or wrong.” *Id.* (quoting *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000)). A certificate of appealability thus requires a showing that “jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *United States v. Silva*, 430 F.3d 1096, 1100 (10th Cir.2005) (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003)).

The court appropriately resolved the issues raised in Le’s § 2255 motion and the associated memorandum brief in support of the motion — (1) whether application of the sentencing guidelines was constitutional; (2) whether the court erred in applying its factual findings to determine Le’s sentence; and (3) the appropriate criminal history. The court finds that Le has failed to demonstrate any reasonable jurist would find the conclusions as to those arguments incorrect. Instead, Le now argues at length that he received ineffective assistance of counsel, attempting to support the bare conclusory allegation of ineffectiveness which was advanced only in his previous reply brief.

Given the nature of the presentation of the defendant’s claims, the court finds no basis for granting the relief sought. Le’s original arguments were each properly rejected. Le’s conclusory arguments relating to the supposed ineffective assistance of counsel, only lately advanced, also provide no grounds for relief.

IS THEREFORE ORDERED this 27<sup>th</sup> day of June, 2006, that the defendant's motion for issuance of a certificate of appealability (Dkt. No. 24) is hereby denied.

s/ J. Thomas Marten  
J. THOMAS MARTEN, JUDGE