

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No: 04-20048-01--JWL

BARRY D. NELSON (01),

Defendant.

ORDER

On October 6, 2008, Barry D. Nelson filed a notice of appeal of the Court's Memorandum and Order dated September 12, 2008 denying his motion for reconsideration of the denial of his request for relief pursuant to 28 U.S.C. § 2255 (Doc. 126). Mr. Nelson also filed a motion on that date for a certificate of appealability (Doc. 127). As explained below, the court declines to grant a certificate of appealability (COA).

A COA should issue if the applicant has "made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), which the Tenth Circuit has interpreted to require that 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*, 392 F.3d 1166, 1171 (10th Cir. 2004) (quoting *Tennard v. Dretke*, 124 S. Ct. 2562, 2569 (2004)(quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000))). The court has carefully considered Mr. Nelson's submissions and it does not believe that reasonable jurists would disagree with the Court's assessment of his claims. Thus the court denies his motion and declines to issue a certificate of

appealability.

IT IS SO ORDERED.

Dated this 9th day of October, 2008, at Kansas City, Kansas.

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