

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

**United States of America,**

**Plaintiff/Respondent,**

**v.**

**Case No. 05-20079-JWL**

**Marlo J. Mims,**

**Defendant/Petitioner.**

**MEMORANDUM & ORDER**

On March 14, 2008, the court entered judgment denying in part Mr. Mims' motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 (doc. 57). The court denied all Mr. Mims' alleged grounds for relief, except it reserved its ruling on Mr. Mims' claims based on *United States v. Shepard*, 544 U.S. 13 (2005). Mr. Mims had argued that his underlying burglary convictions did not qualify as predicate offenses under section 924(e), the Armed Criminal Career Act, to justify his sentence enhancement. In response to the Memorandum and Order, the government submitted the necessary documents showing that the burglary convictions were qualifying convictions. The charging documents show that each of the burglaries was committed in a building, as required by *Shepard*, and Mr. Mims pleaded guilty to those charges (doc. 58). The court issued a second Memorandum and Order on May 5, 2008, (doc. 59) denying the *Shepard* claims on which it had reserved its ruling in the initial Memorandum and Order (doc. 57).

Mr. Mims has now filed a Motion for Certificate of Appealability (doc. 61). Thus, the

court considers whether it is appropriate to grant a certificate of appealability (COA) on any issues and declines to do so. 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 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 id.* (quoting *Tennard v. Dretke*, 124 S. Ct. 2562, 2569 (2004) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000))). For the same reasons set forth in the court’s Memorandum and Orders, the court also finds that reasonable jurists could not find the resolution of these claims to be debatable. The court declines to issue a certificate of appealability.

**IT IS SO ORDERED** this 18<sup>th</sup> day of July, 2008.

s/ John W. Lungstrum

John W. Lungstrum  
United States District Judge