

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Crim No. 06-20050-02-KHV
)	
v.)	
)	Civil No. 08-2491-KHV
JOSE J. ALVARADO-VALENCIA,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

On March 31, 2006, a grand jury indicted defendant for conspiracy to distribute and possess with intent to distribute five kilograms or more of cocaine (Count 1), possession with intent to distribute cocaine and cocaine base (Counts 2-3, 5, 7), attempt to possess with intent to distribute more than 500 grams of cocaine (Count 4), possession of a firearm by an illegal alien (Count 6), use of a communication facility to facilitate the conspiracy (Count 8) and use and maintenance of a residence for the purpose of distributing cocaine (Count 15). See Sealed Indictment (Doc. #1). Without a plea agreement, defendant pled guilty to all counts. On August 20, 2007, the Court sentenced defendant to 280 months in prison. On October 28, 2008, the Court overruled defendant’s motion under 28 U.S.C. § 2255. See Memorandum And Order (Doc. #282). On January 6, 2009, the Court overruled defendant’s motion to reconsider. See Memorandum And Order (Doc. #286). This matter is before the Court on Pro Se Petitioner’s Petition Requesting A Certificate Of Appealability (Doc. #296) filed February 17, 2009. For reasons stated below, the Court overrules defendant’s motion.

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 prior orders, see Memorandum And Order (Doc. #282) and Memorandum And Order (Doc. #286), the Court finds that defendant has not made a substantial showing of the denial of a constitutional right.

IT IS THEREFORE ORDERED that Pro Se Petitioner’s Petition Requesting A Certificate Of Appealability (Doc. #296) filed February 17, 2009 be and hereby is **OVERRULED**.

Dated this 19th day of February, 2009, at Kansas City, Kansas.

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