

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Crim No. 06-20056-09-KHV
)	
v.)	
)	Civil No. 08-2466-KHV
TRISTAN LUSTER,)	
)	
Defendant.)	
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MEMORANDUM AND ORDER

On November 1, 2007, pursuant to a plea agreement under Rule 11(c)(1)(C), Fed. R. Crim. P., defendant pled guilty to distribution of cocaine in violation of 21 U.S.C. § 841(a). See Petition To Enter Plea Of Guilty And Order Entering Plea (Doc. #352). On May 19, 2008, consistent with the parties' plea agreement, the Court sentenced defendant to 180 months in prison. On April 8, 2009, the Court overruled defendant's motion under 28 U.S.C. § 2255. See Memorandum And Order (Doc. #646). This matter is before the Court on defendant's Request For Authorization To Appeal (Doc. #670) filed May 25, 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 order, see Memorandum And Order (Doc. #646), the Court finds that defendant has

not made a substantial showing of the denial of a constitutional right.

IT IS THEREFORE ORDERED that defendant's Request For Authorization To Appeal (Doc. #670) filed May 25, 2009 be and hereby is **OVERRULED**.

Dated this 5th day of June, 2009, at Kansas City, Kansas.

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