

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

Vs.

Nos. 06-40153-01-SAC
10-4089-SAC

CORNELIUS DYCK-QUIRING a/k/a
Cornelius Dyck a/k/a Benjamin
Dyck-Becker a/k/a Benjamin Dyck,

Defendant.

MEMORANDUM AND ORDER

This case comes before the court on the defendant's motion for leave to appeal in forma pauperis (Dk. 42). The court sustains the motion based on the movant's averred representations.

It has come to the court's attention that the matter of a certificate of appealability has not been decided. Rule 11 of the Rules Governing Section 2255 Proceedings require the district court in its final order to consider whether to issue such a certificate. For the court to do so, the movant must demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate

to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks and citation omitted). The defendant’s filings offer no debatable arguments against the court’s holding that his claims are barred as untimely and not preserved by equitable tolling. Consequently, a reasonable jurist would not find the court’s ruling to be debatable or wrong here. The court denies a certificate of appealability.

IT IS THEREFORE ORDERED that the defendant’s motion for leave to appeal in forma pauperis (Dk. 42) is granted;

IT IS FURTHER ORDERED that the defendant is denied a certificate of appealability.

Dated this 14th day of February, 2011, Topeka, Kansas.

s/ Sam A. Crow

Sam A. Crow, U.S. District Senior Judge