

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARTIN GALINDO,

Defendant.

Memorandum and Order

Defendant Martin Galindo was charged and convicted of a number of drug and firearm violations. Galindo entered into a plea agreement with the Government, and was sentenced to 168 months imprisonment. Galindo did not file a direct appeal, but filed a Motion to Vacate pursuant to 28 U.S.C. § 2255. The Court denied the Motion. Galindo filed a notice of appeal, and the Tenth Circuit affirmed the ruling of this Court. The United States Supreme Court denied certiorari. Galindo then filed a Motion for Relief pursuant to Rule 60(b), requesting the Court set aside the Judgment entered on the Motion to Vacate. This Court denied the motion. Currently before the Court is Galindo's Motion for Certificate of Appealability (Doc. 56), and a Motion for Leave to Appeal in Forma Pauperis (Doc. 57), as he is seeking to appeal the Court's ruling of the Motion for Relief.

A Certificate of Appealability is only issued when the petitioner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The petitioner must show at the very least that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reasons would find it debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel,

529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000).

A review of Galindo's motion shows he is attempting to relitigate the same issue he raised in the Section 2255 motion, and the issue he raised in the motion for relief under Rule 60. This Court has taken two opportunities to address the arguments, and the Tenth Circuit has also addressed this argument. The result was the same in all three instances. Galindo has not pointed to any evidence or presented any argument that would allow reasonable jurists to find that he has raised a valid claim of the denial of a constitutional right. Galindo's Motion for a Certificate of Appealability is denied.

The Defendant also requests the court allow him to proceed in forma pauperis. A review of the record shows that the Defendant was granted leave to file IFP in his motion to vacate and in his appeal to the Tenth Circuit. The Defendant provided the necessary paperwork for the court to find that pursuant to Fed. R. App. P. 24(a), the Defendant qualifies for in forma pauperis status.

IT IS THEREFORE ORDERED the Defendant's Motion for Leave to Appeal in Forma Pauperis (Doc. 57) is GRANTED.

IT IS FURTHER ORDERED the Defendant's Motion for a Certificate of Appealability (Doc. 56) is DENIED.

IT IS SO ORDERED on this 20th day of September, 2011.

s/ Wesley E. Brown
Wesley E. Brown
United States Senior District Court Judge