

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

Adrian M. Requena,

Petitioner,

v.

Case No. 07-3058-JWL

Ray Roberts, et al.

Respondents.

ORDER

On August 24, 2007, the court entered an order denying Mr. Requena's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Mr. Requena has now filed a Motion for Certificate of Appealability ("COA"). Thus, the court considers whether it is appropriate to grant a COA on any issues. As explained below, with the exception of one issue, the court declines to grant a COA.

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 jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *United States v. Silva*, 430 F.3d 1096, 1100 (10th Cir. 2005), quoting *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In his § 2254 motion, Mr. Requena alleged his constitutional rights were violated when he received ineffective assistance of counsel when his lawyer gave him erroneous advice on the plea and sentencing

guidelines. The court does not waiver in it conclusion that Mr. Requena could not establish prejudice, under *Strickland's* second prong, on this claim because he did not provide any objective evidence of a reasonable probability that but for counsel's actions, he would have accepted the plea agreement. However, reasonable jurists might disagree on whether there is a "great disparity," which can satisfy the objective evidence requirement, between the actual maximum sentencing exposure and that represented by counsel and what numbers should be compared to determine this.

For the foregoing reason, this court grants the COA on the ineffective assistance of counsel claim based upon erroneous advice on sentencing guidelines, but denies the COA as to all other issues raised by Mr. Requena.

IT IS SO ORDERED this 26th day of September, 2007.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge