

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Nos. 08-CR-10141-1-JTM
17-CV-01244-JTM

THOMAS J. FERNANDEZ,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on defendant Tommy Fernandez's motion to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2255 (Dkt. 194). This is defendant's second § 2255 motion.¹ The court does not have jurisdiction to consider a successive § 2255 motion unless it has been certified "by a panel of the appropriate court of appeals." *See* 28 U.S.C. § 2255(h). Defendant's motion has not been certified by the Tenth Circuit and it is dismissed.

Because defendant is not entitled to relief, the court denies his request for an evidentiary hearing. An evidentiary hearing is generally not required when "the motion and files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b).

Rule 11 of the Rules Governing Section 2255 Proceedings directs the court to issue or deny a certificate of appealability when it issues a final adverse order. A certificate of appealability is not warranted in this case because reasonable jurists could

¹ Defendant filed a § 2255 motion on April 15, 2010 (Dkt. 142), which was ultimately dismissed on appeal on August 23, 2011 (Dkt. 171).

not debate whether the motion “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 citation omitted); 28 U.S.C. § 2253(c)(2).

IT IS THEREFORE ORDERED this 21st day of December, 2017, that defendant’s motion to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2255 (Dkt. 194) is dismissed.

IT IS FURTHER ORDERED that defendant’s request for an evidentiary hearing is denied.

IT IS FURTHER ORDERED that the court will not issue a certificate of appealability in this case.

s/ J. Thomas Marten

J. Thomas Marten, Judge