

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CRIMINAL ACTION
)	No. 08-20160-08-KHV
v.)	
)	CIVIL ACTION
FRANCISCO PEREA,)	No. 11-2218-KHV
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

On December 15, 2009, defendant pled guilty to conspiracy to distribute and possess with intent to distribute 50 grams or more of methamphetamine. On April 20, 2010, the Court sentenced defendant to 292 months in prison. This matter is before the Court on defendant's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody (Doc. #349) filed April 14, 2011. On March 8, 2012, except for defendant's claims related to counsel's failure to file an appeal or consult defendant about a possible appeal, the Court found that defendant's claims should be overruled. See Memorandum And Order (Doc. #382). The Court referred defendant's remaining two claims to U.S. Magistrate Judge James P. O'Hara for a report and recommendation. On August 13, 2012, Judge O'Hara recommended that the Court overrule defendant's remaining two claims. See Report And Recommendation (Doc. #393). The deadline for written objections to the report and recommendation was August 27, 2012. See Rule 72, Fed. R. Civ. P. The parties have not objected. The Court therefore adopts the Report And Recommendation (Doc. #393) in its entirety.

Certificate Of Appealability

Under Rule 11 of the Rules Governing Section 2255 Proceedings, the Court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. 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).¹ To satisfy this standard, the movant must demonstrate that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” Saiz v. Ortiz, 392 F.3d 1166, 1171 n.3 (10th Cir. 2004) (quoting Tennard v. Dretke, 542 U.S. 274, 282 (2004)). For reasons stated in the Court’s Memorandum And Order (Doc. #382) and Judge O’Hara’s Report And Recommendation (Doc. #393), the Court finds that defendant has not made a substantial showing of the denial of a constitutional right. Accordingly, the Court denies a certificate of appealability.

IT IS THEREFORE ORDERED that defendant’s Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody (Doc. #349) filed April 14, 2011 be and hereby is **OVERRULED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED** as to the Court’s ruling on defendant’s motion under 28 U.S.C. § 2255.

Dated this 4th day of September, 2012 at Kansas City, Kansas.

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

¹ The denial of a Section 2255 motion is not appealable unless a 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).