

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

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CRIMINAL ACTION</b>
	)	
<b>v.</b>	)	<b>No. 08-20160-01-KHV</b>
	)	
<b>JUAN MATA-SOTO,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**ORDER DENYING CERTIFICATE OF APPEALABILITY**

On January 24, 2018, the Court dismissed defendant’s Motion For Relief From Judgment In Prior 28 U.S.C. § 2255 And Audita Querela Proceedings Pursuant To Fed. R. Civ. P. 60(b)(6) As His Waiver Of Appellate Rights Was In Violation Of Movant’s Sixth Amendment Right To Effective Counsel (Doc. #486) filed August 7, 2017, which the Court construed as a second or successive motion to vacate sentence under 28 U.S.C. § 2255. See Memorandum And Order (Doc. #487). 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).<sup>1</sup> 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. #487), the Court finds that defendant has not satisfied this standard. The Court

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<sup>1</sup> 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).

therefore denies a certificate of appealability as to its ruling on defendant's Section 2255 motion.

**IT IS THEREFORE ORDERED** that a certificate of appealability as to the ruling on defendant's Motion For Relief From Judgment In Prior 28 U.S.C. § 2255 And Audita Querela Proceedings Pursuant To Fed. R. Civ. P. 60(b)(6) As His Waiver Of Appellate Rights Was In Violation Of Movant's Sixth Amendment Right To Effective Counsel (Doc. #486) filed August 7, 2017, which the Court construed as a second or successive motion to vacate sentence under 28 U.S.C. § 2255, is **DENIED**. **The Clerk shall forward a copy of this Order to the Tenth Circuit Court of Appeals.**

Dated this 8th day of March, 2018 at Kansas City, Kansas.

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