

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MARTIN GALINDO,)
)
Defendant.)

Memorandum and Order

Martin Galindo was convicted of drug and firearm offenses, and was sentenced to 168 months imprisonment. He did not file a direct appeal. Galindo filed a Motion to Vacate Pursuant to 28 U.S.C. § 2255, which was denied by this court. (See 07-10199, Doc. 43). Galindo appealed this court’s decision, and the Tenth Circuit affirmed. Galindo then filed a writ of certiorari, which was denied by the Supreme Court.

Currently before the court is Galindo’s Motion for Relief From Judgment Pursuant to Federal Rule Civil Procedure 60(b)(6). (10-1171, Doc. 3). Galindo requests this court vacate the judgment entered on August 27, 2010, in which this court found that sufficient facts were not plead to establish an ineffective assistance of counsel claim, and also finding that Galindo’s claim was barred by the statute of limitations. Galindo further requests an evidentiary hearing on his claim that counsel did not file a notice of appeal when requested.

“[T]he court may relieve a party or its legal representative from a final judgment, order, or proceeding for ... any other reason that justifies relief.” Fed.R.Civ.P. 60(b)(6). Galindo requests the court vacate the order denying his section 2255 motion, but Galindo has not set forth any additional facts or legal reasons to justify this request. Galindo argues that the court failed

to hold an evidentiary hearing to resolve the question whether his attorney was instructed to file a notice of appeal. However, as discussed in the Order denying the section 2255 motion, Galindo bears the burden of establishing that he requested his attorney to file a notice of appeal. Galindo did not set forth anything but a bare assertion that he asked his attorney to file an appeal, without any factual support or credible testimony to support the allegation. Now Galindo is asking the court to grant him relief from the judgment, and grant him an evidentiary hearing, but has failed to set forth any justifiable grounds for relief. Furthermore, Galindo has again failed to set forth anything more than a conclusory claim that he requested his attorney to file a notice of appeal. Galindo has not set forth any support or legal reason for the court to grant relief from the Order entered on the docket on August 27, 2010, a decision which the Tenth Circuit affirmed .

For the reasons set forth above, Galindo's Motion for Relief (Doc. 2) is denied.

IT IS SO ORDERED this 4th day of August, 2011.

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