

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

Case No. 12-10174-JTM

PHILIP ANDRA GRIGSBY,
Defendant.

MEMORANDUM AND ORDER

In its order of January 12, 2018, the court denied defendant's Motion to Correct his Presentence Report (PSR) (Dkt. 268) and dismissed his separate Motion to Set Aside Judgment. (Dkt. 272). Defendant then filed a Notice of Appeal (Dkt. 277) as to the denial of the request to amend the PSR. The Tenth Circuit has remanded the matter for the determination of whether to issue a certificate of appealability (COA).

A COA may issue if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). 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)). A certificate is appropriate if "jurists of reason could disagree with the district court's resolution of his constitutional

claims or ... jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

The court will not issue a COA. As determined in the court's prior order, the evidence cited by defendant – a 2017 report by an unidentified worker in prison counseling services – offers no valid grounds for modifying the contents of a PSR issued four years earlier. Defendant's second motion was a successive 28 U.S.C. § 2255 motion, which the court was without jurisdiction to entertain on the merits. This determination is not subject to substantial doubt, and the same is true for the court's conclusion that a successive § 2255 motion is not justified under the facts and circumstances of the case.

IT IS SO ORDERED this 2nd day of February, 2018.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE