

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CRIMINAL ACTION
)	
v.)	No. 13-20011-01-KHV
)	
BRETT J. WILLIAMSON,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

On May 28, 2015, the Court sentenced defendant to a controlling term of life in prison. On September 23, 2019, the Court overruled defendant’s motion to vacate under 28 U.S.C. § 2255 and denied a certificate of appealability. See Memorandum and Order (Doc. #230). On June 25, 2020, defendant filed a Motion For Relief From Judgment And Order (Doc. #240), which sought relief from the judgment on his Section 2255 motion. On July 21, 2020, the Court overruled defendant’s motion. See Memorandum and Order (Doc. #241). On August 11, 2020, the Court overruled defendant’s motion to reconsider that ruling. See Memorandum and Order (Doc. #243). Defendant appealed “the Court’s July 21, 2020 judgment.” Notice Of Appeal (Doc. #244). This matter is before the Court on the Tenth Circuit’s limited remand for this Court to determine whether to issue a certificate of appealability. See Order (Doc. #247). For reasons stated below, the Court denies a certificate of appealability.

Factual Background

On September 23, 2019, the Court overruled defendant’s motion to vacate under 28 U.S.C. § 2255 and denied a certificate of appealability. See Memorandum and Order (Doc. #230). On March 24, 2020, the Court overruled defendant’s Certified Motion To Alter/Make Additional

Findings And Alter/Amend Judgment (Doc. #231) filed October 28, 2019. See Memorandum and Order (Doc. #232). On May 4, 2020, defendant appealed. See Notice Of Appeal (Doc. #233).

On May 26, 2020, based on the pending appeal, the Court dismissed for lack of jurisdiction defendant's Motion For Relief From Judgment And Order (Doc. #237) filed May 8, 2020, which also challenged the Memorandum and Order (Doc. #232). See Memorandum and Order (Doc. #238).

On June 9, 2020, on defendant's motion, the Tenth Circuit dismissed his appeal. See Order (Doc. #239). On June 25, 2020, defendant filed another Motion For Relief From Judgment And Order (Doc. #240), which sought relief from the judgment on his Section 2255 motion. On July 21, 2020, the Court overruled defendant's motion. See Memorandum and Order (Doc. #241). On August 7, 2020, defendant filed a Motion To Reconsider Motion For Relief From Judgment And Order (Doc. #242), which the Court overruled. See Memorandum and Order (Doc. #243).

On September 14, 2020, defendant appealed "the Court's July 21, 2020 judgment." Notice Of Appeal (Doc. #244). The Tenth Circuit has remanded this matter for the limited purpose to determine whether this Court should issue a certificate of appealability. See Order (Doc. #247).

Analysis

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. To proceed on appeal of the denial of a Rule 60(b) motion which challenges the ruling on a Section 2255

motion, defendant also must obtain a certificate of appealability. See Spitznas v. Boone, 464 F.3d 1213, 1217–18 (10th Cir. 2006). 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 substantially the reasons stated in the Court’s four orders (Doc. ##230, 232, 241 & 243) on the merits of defendant’s Section 2255 motion and his motions for relief from judgment, defendant has not satisfied this standard. The Court therefore denies a certificate of appealability as to its ruling on defendant’s Motion For Relief From Judgment And Order (Doc. #240) and his Motion To Reconsider Motion For Relief From Judgment And Order (Doc. #242).

IT IS THEREFORE ORDERED that a certificate of appealability as to the Court’s rulings on defendant’s Motion For Relief From Judgment And Order (Doc. #240) filed June 25, 2020 and on his Motion To Reconsider Motion For Relief From Judgment And Order (Doc. #242) filed August 7, 2020 is **DENIED**. **The Clerk is directed to send a copy of this Memorandum And Order to the Tenth Circuit Court of Appeals.**

Dated this 18th day of September, 2020 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).