

August 12, 2009

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EVER ENRIQUE CAICEDO,

Defendant - Appellant.

No. 08-1350

(D. Colorado)

(D.C. Nos. 1:91-CR-00355-LTB
and 1:08-CV-01853-LTB)

ORDER DENYING CERTIFICATE OF APPEALABILITY

Before **HARTZ, McKAY, and O'BRIEN**, Circuit Judges.

Ever Enrique Caicedo was sentenced in the United States District Court for the District of Colorado in 1992 on a guilty plea to possession with intent to distribute cocaine. *See* 21 U.S.C. § 841(a)(1), (b)(1)(A). His sentence was reduced in 1993. In 1998 jurisdiction over his case was transferred to the Southern District of Texas. *See* 18 U.S.C. § 3605. On August 29, 2008, Mr. Caicedo moved for relief under 28 U.S.C. § 2255 in the District of Colorado. The district court ruled that to the extent that Mr. Caicedo was challenging actions taken before transfer of his case to Texas, his claims were untimely. *See* 28 U.S.C. § 2255(f). And to the extent that his claims related to actions after transfer of his case, he needed to pursue relief in the Southern District of Texas. The court therefore denied his motion. Mr. Caicedo has applied to this court for a

certificate of appealability (COA) to enable him to appeal the denial. *See* 28 U.S.C. § 2253(c)(1)(B) (requiring COA to appeal denial of § 2255 relief).

A COA will issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This standard requires “a demonstration that . . . includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the [motion] should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted). If the motion was denied on procedural grounds, as it was in this case, the applicant faces a double hurdle. Not only must the applicant make a substantial showing of the denial of a constitutional right, but he must also show “that jurists of reason would find it debatable . . . whether the district court was correct in its procedural ruling.” *Id.*

For the reasons stated by the district court, Mr. Caicedo was clearly not entitled to relief. We DENY a COA and DISMISS his appeal. We GRANT his motion for leave to proceed *in forma pauperis*.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge