

January 19, 2011

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES DURAN,

Defendant - Appellant.

No. 10-4132

(D. Utah)

(D.C. Nos. 1:08-CV-00044-DAK and
1:03-CR-00139-DAK-1)

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

Before **MURPHY, GORSUCH,** and **HOLMES,** Circuit Judges.

This matter is before the court on James Duran’s pro se request for a certificate of appealability (“COA”). Duran seeks a COA so he can appeal the district court’s denial of his 28 U.S.C. § 2255 motion. 28 U.S.C. § 2253(c)(1)(B). Because Duran has not “made a substantial showing of the denial of a constitutional right,” *id.* § 2253(c)(2), this court **denies** his request for a COA and **dismisses** this appeal.

Following a jury trial, Duran was convicted of multiple counts of violating federal drug and firearm prohibitions. *United States v. Duran*, 213 Fed. App’x 764, 765 (10th Cir. 2007). This court affirmed Duran’s convictions on appeal, concluding that neither the issues raised by counsel nor the issues raised by Duran

in a pro se brief had any merit. *Id.* at 767-68. Duran thereafter filed the instant § 2255 motion, raising numerous issues, many of which had multiple sub-issues. After carefully parsing Duran’s voluminous and often opaque filings, the district court denied Duran’s § 2255 motion on the merits.

The granting of a COA is a jurisdictional prerequisite to Duran’s appeal from the denial of his § 2255 motion. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). To be entitled to a COA, Duran must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make the requisite showing, he must demonstrate “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.” *Id.* (quotations omitted). In evaluating whether Duran has satisfied his burden, this court undertakes “a preliminary, though not definitive, consideration of the [legal] framework” applicable to each of his claims. *Id.* at 338. Although Duran need not demonstrate his appeal will succeed to be entitled to a COA, he must “prove something more than the absence of frivolity or the existence of mere good faith.” *Id.*

Having undertaken a review of Duran’s appellate filings, the district court’s order, and the entire record before this court pursuant to the framework set out by the Supreme Court in *Miller-El*, we conclude Duran is not entitled to a COA. The district court’s resolution of Duran’s § 2255 motion is not reasonably subject to

debate and the issues he seeks to raise on appeal are not adequate to deserve further proceedings. Accordingly, this court **DENIES** Duran's request for a COA and **DISMISSES** this appeal.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge