

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 23, 2017

**Elisabeth A. Shumaker
Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FERNANDO DELGADO-
ORNELAS,

Defendant - Appellant.

No. 17-3053
(D.C. Nos. 6:15-CR-10141-EFM-1
and 6:16-CV-01422-EFM)
(D. Kan.)

**ORDER DENYING A CERTIFICATE OF APPEALABILITY AND
DISMISSING THE APPEAL**

Before **BRISCOE, HARTZ, and BACHARACH**, Circuit Judges.

This appeal involves the denial of relief under 28 U.S.C. § 2255. The threshold issue is whether the defendant has justified a certificate of appealability. We answer “no” and decline to issue a certificate of appealability. This decision requires us to dismiss the appeal.

The defendant, Mr. Fernando Delgado-Ornelas, wants to appeal a conviction based on ineffective assistance of counsel. Mr. Delgado was charged in federal court with illegal reentry after removal based on a conviction for an aggravated felony. After conferring with counsel, Mr. Delgado pleaded guilty. The district court accepted the plea and imposed a

prison term of 37 months. According to Mr. Delgado, his attorney provided ineffective assistance by promising a lower sentence. The district court rejected this claim, reasoning that the plea colloquy belied the alleged promise and that the alleged ineffectiveness would not have been prejudicial.

To appeal this ruling, Mr. Delgado-Ornelas needs a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B). Such a certificate may issue only if Mr. Delgado-Ornelas has made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Miller–El v. Cockrell*, 537 U.S. 322, 336 (2003). Where, as here, the district court has dismissed a petitioner’s § 2255 claim on the merits, the petitioner must show that the district court’s conclusion was subject to reasonable debate. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

In our view, the district court’s reasoning is not subject to reasonable debate. As a result, we decline to issue a certificate of appealability. And in the absence of a certificate of appealability, we must dismiss the appeal.

Entered for the Court

Robert E. Bacharach
Circuit Judge