

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 20, 2017

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARLES HENDERSON, JR.,

Defendant - Appellant.

No. 17-3101
(D. Kansas)
(D.C. Nos. 2:13-CR-20065-CM-1
and 2:15-CV-09197-CM)

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

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

Mr. Charles Henderson, Jr. pleaded guilty in federal court on drug charges and was sentenced to 129 months in prison. After unsuccessfully moving to vacate his sentence under 28 U.S.C. § 2255, Mr. Henderson seeks a certificate of appealability so that he can appeal. We deny Mr. Henderson's request for a certificate of appealability and dismiss the appeal.

Mr. Henderson can appeal only if we issue a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B). This certificate is available only if an applicant can make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This showing has been made

only if reasonable jurists could debate the merits of Mr. Henderson's appeal. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Mr. Henderson argues that the district court improperly dismissed his claim of ineffective assistance. For this claim, Mr. Henderson had to show that his attorney's performance was deficient and prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The district court rejected Mr. Henderson's claim, concluding that his attorney's efforts were reasonable and did not prejudice Mr. Henderson's sentencing. For substantially the same reasons discussed by the district court, we conclude that its ruling is not subject to reasonable debate. Thus, we decline to issue a certificate of appealability and dismiss the appeal.

Entered for the Court

Robert E. Bacharach
Circuit Judge