

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DANIEL LOPEZ,

Petitioner,

-vs-

Case No. 2:08-cv-612-FtM-29SPC
Case No. 2:05-cr-64-FTM-29SPC

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

This matter comes before the Court on Petitioner's Notice of Appeal (Doc. #17) filed on March 23, 2009. Pursuant to FED. R. APP. P. 22(b)(1), this is deemed to also include an application for certificate of appealability (Doc. #18).

Under 28 U.S.C. § 2253(c)(1), an appeal cannot be taken from a final order in a habeas proceeding unless a certificate of appealability issues. The decision to issue a certificate of appealability requires "an overview of the claims in the habeas petition and a general assessment of their merits." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Specifically, where a district court has rejected a prisoner's constitutional claims on the merits, the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. See Slack v. McDaniel, 529 U.S. 473, 484 (2000); Peoples v. Haley, 227 F.3d 1342 (11th Cir. 2000). When

the district court has rejected a claim on procedural grounds, the petitioner must show that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Slack, 529 U.S. at 484; Franklin v. Hightower, 215 F.3d 1196, 1199 (11th Cir. 2000) (per curiam), cert. denied, 121 S. Ct. 1738 (2001). "This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims." Miller-El v. Cockrell, 537 U.S. at 336.


On February 13, 2009, the Court entered an Opinion and Order (Doc. #13) denying petitioner's Motion Under 28 U.S.C. § 2255 TO Vacate, Set Aside, and to Correct Sentence By a Person in Federal Custody as to all claims. Judgment (Doc. #14) was entered on the same day. On March 12, 2009, the Court entered an Order (Doc. #16) denying petitioner's Motion to Alter or Amend Judgment Pursuant to Rule 59(e) (Doc. #15). The Notice of Appeal (Doc. #17) seeks to appeal from the Opinion and Order and Order denying petitioner's Motion to alter or amend the judgment. Upon review, the Court finds that petitioner has failed to show that jurists of reason would find the Court's assessment of the constitutional claim debatable or wrong or that the Court was incorrect in its procedural rulings. The Court further finds a certificate should be denied as to the Order on the motion to alter or amend the judgment.

Accordingly, it is now

ORDERED:

Petitioner's application for certificate of appealability (Doc. #18), deemed included in the Notice of Appeal, is **DENIED**.

DONE AND ORDERED at Fort Myers, Florida, this 24th day of March, 2009.



JOHN E. STEELE
United States District Judge

Copies:
All Parties of Record

United States Court of Appeals
Eleventh Circuit
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