

F I L E D
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 21, 2006

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ANTONIO RAMIREZ-DOMINGUEZ,
Defendant-Appellant.

No. 05-2376
(D.C. No. CIV-05-1042 JC/LFG)
(D. New Mex.)

ORDER

Before **KELLY**, **McKAY**, and **LUCERO**, Circuit Judges.

Appellant is a federal prisoner appearing pro se, seeking relief pursuant to 28 U.S.C. § 2255. Appellant pleaded guilty to charges of reentry of a deported alien previously convicted of an aggravated felony and was sentenced to fifty-seven months in prison. He did not appeal his conviction or sentence. Appellant then filed a petition seeking leave to file a successive habeas petition with this court that was dismissed as unnecessary, since he had not previously sought habeas relief. He then filed a § 2255 habeas petition which the district court denied. Memorandum Opinion and Order, 3 (D.N.M. Nov. 7, 2005).

Appellant, invoking *Blakely v. Washington*, 542 U.S. 296 (2004), and *United States v. Booker*, 543 U.S. 220 (2005), seeks to challenge his sentence.

However, as the district court stated, these Supreme Court holdings are not available to Appellant on collateral review. Memorandum Opinion and Order, *supra*, at 2 (citing *United States v. Bellamy*, 411 F.3d 1182, 1188 (10th Cir. 2005)). Relying on *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), Appellant makes an additional argument for sentence reduction. Again, the district court denied this avenue of support for Appellant's claims. Memorandum Opinion and Order, *supra*, at 2-3.

Appellant now seeks from this court a certificate of appealability. The issues he raises on appeal are identical to those brought before the district court. To grant a certificate of appealability, Appellant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (1994). To meet this burden, Appellant must demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition 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) (quotation omitted).

We have carefully reviewed Appellant's brief, the district court's disposition, and the record on appeal. Nothing in the facts, the record on appeal, or Appellant's filing raises an issue which meets our standard for the grant of a certificate of appealability. For substantially the same reasons set forth by the district court judge in its Memorandum Opinion and Order of November 7, 2005,

we cannot say “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner.” *Id.*

Accordingly, we **DENY** Appellant’s request for a certificate of appealability and **DISMISS** the appeal; however, we **GRANT** Appellant’s request to proceed *in forma pauperis*.

Entered for the Court

Monroe G. McKay
Circuit Judge