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E-Filed 2/22/2010

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

v.

LUCIO SANCHEZ-BELTRAN,

Defendant.

Case Number CR 99-20106 JF
C 07-2098 JF

ORDER¹ DENYING MOTION FOR
CERTIFICATE OF APPEALABILITY

On June 26, 2009, this Court denied on the merits Defendant Lucio Sanchez-Beltran's motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. Defendant appealed. On December 1, the Court of Appeals remanded the case to this Court for the limited purpose of granting or denying a certificate of appealability.²

A defendant may not appeal the denial of a § 2255 motion without first obtaining a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B). A court may issue a certificate of

¹ This disposition is not designated for publication in the official reports.

² Defendant did not file a motion for a certificate of appealability, but this Court will construe his appeal as such a motion.

1 appealability “only if the applicant has made a substantial showing of the denial of a
2 constitutional right. 28 U.S.C. § 2253(c)(2). A certificate of appealability must indicate which
3 specific issues satisfy this requirement. 28 U.S.C. § 2253(c)(3).

4 “Where a district court has rejected the constitutional claims on the merits, the showing
5 required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable
6 jurists would find the district court’s assessment of the constitutional claims debatable or
7 wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

8 Defendant’s § 2255 motion was based upon a claim of ineffective assistance of counsel.
9 This Court carefully considered the bases for the claim, and concluded that Defendant had failed
10 to demonstrate that his counsel’s performance was defective under the standards established by
11 *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The Court is not persuaded that reasonable
12 jurists would find this conclusion debatable or wrong.

13 Accordingly, Defendant’s motion for a certificate of appealability is DENIED.

14 IT IS SO ORDERED.

15 The clerk shall forward to the court of appeals the case file with this order. *See* Fed. R.
16 App. P. 22(b).

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19 DATED: 2/22/2009

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22 JEREMY FOGEL
23 United States District Judge
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1 This Order has been served upon the following persons:

2
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