

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>JAMES T. ELLIS,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>CIVIL NO. 09-1037-GPM</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	<b>CRIMINAL NO. 04-30139-GPM</b>
	)	
<b>Respondent.</b>	)	

**MEMORANDUM AND ORDER**

**MURPHY, District Judge:**

On November 10, 2011, this Court denied Mr. Ellis’s motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 (Doc. 12). On December 19, 2011, Mr. Ellis filed a request for certification of appealability pursuant to the Federal Rules of Appellate Procedure and 28 U.S.C. § 2253 (Doc. 13).

In a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. 2253(c). “A certificate of appealability may issue...only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner makes a substantial showing where 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.” *Sandoval v. United States*, 574 F.3d 847, 852 (7th Cir. 2009), quoting *Arredondo v. Huibregtse*, 542 F.3d 1155, 1165 (7th Cir. 2008).

Mr. Ellis’s motion for certificate of appealability does not identify grounds for appeal of the

Court's decision. As explained in the Order dismissing Mr. Ellis's § 2255 motion, Mr. Ellis received a below-guideline sentence—there was, demonstrably, no prejudice from any of the alleged deficiencies in representation. The Court cannot say that the issues Mr. Ellis presented are “adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). For the reasons set forth in the Court's Memorandum and Order, Mr. Ellis fails to show the denial of a constitutional right on the basis of ineffective assistance of counsel—much less a substantial showing of such a right. Accordingly, the Court **DECLINES** to issue a certificate of appealability. Mr. Ellis's motion is **DENIED**. Pursuant to Federal Rule of Appellate Procedure 22(b), Mr. Ellis may renew his request for a certificate of appealability to the Court of Appeals for the Seventh Circuit.

**IT IS SO ORDERED.**

DATED: January 17, 2012

*s/ G. Patrick Murphy*  
G. PATRICK MURPHY  
United States District Judge