IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CEDRIC MCDONALD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. C 17-3057-MWB
(CR 14-3056-MWB-1)

OPINION AND ORDER REGARDING CERTIFICATE OF APPEALABILITY

This case is before me on remand from the Eighth Circuit Court of Appeals to consider whether a certificate of appealability should issue in light of *Tiedeman v. Benson*, 122 F.3d 518 (8th Cir. 1997). I inadvertently omitted a determination on the certificate of appealability issue in my August 20, 2018, Opinion And Order Regarding Petitioner's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence. In that Opinion And Order, I granted petitioner McDonald's § 2255 Motion to the extent that his sentence of 210 months was corrected to 120 months, the maximum sentence that could have been imposed without an ACCA enhancement; denied the part of his § 2255 Motion claiming ineffective assistance of counsel for failing to challenge the determination that two prior second-degree robbery convictions, under Iowa law, were also predicate ACCA offenses; and denied the part of his § 2255 Motion claiming ineffective assistance of counsel for failing to object to the court's use of a video that addressed racial prejudice.

My denial, in part, of McDonald's claims for § 2255 relief raises the question of whether or not he is entitled to a certificate of appealability on those claims. In order to obtain a certificate of appealability on those claims, McDonald must make a substantial

showing of the denial of a constitutional right. *See Miller–El v. Cockrell*, 537 U.S. 322 (2003); *Garrett v. United States*, 211 F.3d 1075, 1076–77 (8th Cir. 2000); *Mills v. Norris*, 187 F.3d 881, 882 n.1 (8th Cir. 1999); *Carter v. Hopkins*, 151 F.3d 872, 873–74 (8th Cir. 1998); *Ramsey v. Bowersox*, 149 F.3d 749 (8th Cir. 1998); Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997). "A substantial showing is a showing that issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings." *Cox*, 133 F.3d at 569. Moreover, the United States Supreme Court reiterated in *Miller–El v. Cockrell* that, "'[w]here a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.'" 537 U.S. at 338 (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). For essentially the reasons set out in my August 20, 2018, Opinion And Order, I now conclude that McDonald has failed to make a substantial showing that denial of two of his claims is debatable among reasonable jurists, that a court could resolve any of the issues raised in those claims differently, or that any question raised in those claims deserves further proceedings. Consequently, a certificate of appealability is denied as to McDonald's claims for § 2255 relief that I denied. *See* 28 U.S.C. § 2253(c)(1)(B); *Miller-El*, 537 U.S. at 335-36; *Cox*, 133 F.3d at 569.

THEREFORE, no certificate of appealability will issue for any claim or contention in this case.

IT IS SO ORDERED.

DATED this 15th day of October, 2018.

Mark W. Bennett

MARK W. BENNETT
U.S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA