

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ANTHONY PENDER  
:  
:  
v. : Civil Action No. DKC 09-0034  
: Criminal Case No. DKC 06-0083  
:  
UNITED STATES OF AMERICA  
:

**MEMORANDUM OPINION**

This court issued a memorandum opinion and order denying Petitioner's motion to vacate, set aside, or correct sentence on March 29, 2012 (ECF Nos. 61, 62). Following the Petitioner's appeal, the United States Court of Appeals for the Fourth Circuit remanded the case on March 20, 2013, to further develop the record before ruling (ECF No. 71). The mandate was issued May 13, 2013 (ECF No. 74).

On October 27, 2016, President Barack Obama issued an Executive Grant of Clemency commuting Petitioner's sentence to a term of 188 months imprisonment (ECF No. 91).

This court issued an Order on May 9 directing Petitioner to show cause why his pending motion to vacate, set aside, or correct sentence should not be dismissed as moot citing *United States v. Surratt*, 2017 WL 1423296 (ECF No. 92). Petitioner, through counsel, agreed that the pending motion pursuant to 28 U.S.C. § 2255 is moot (ECF No. 93).

Accordingly, Petitioner's motion will be denied.

Pursuant to Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. § 2255, the court is also required to issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A certificate of appealability is a "jurisdictional prerequisite" to an appeal from the court's earlier order. *United States v. Hadden*, 475 F.3d 652, 659 (4<sup>th</sup> Cir. 2007). 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). Where the court denies petitioner's motion on its merits, a petitioner satisfies this standard by demonstrating that reasonable jurists would find the court's assessment of the claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see also *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). Upon review of the record, the court finds that Petitioner does not satisfy the above standard. Accordingly, the court will decline to issue a certificate of appealability on the issues which have been resolved against Petitioner. A separate order will follow.

/s/

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DEBORAH K. CHASANOW  
United States District Judge