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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

| CHRISTIAN MORENO, | |) |
|---------------------------|-------------|----------------------------------|
| | Movant, |) |
| VS. | |) No. 08-00529-CV-W-FJG |
| UNITED STATES OF AMERICA, | | , Crim. No. 06-00368-01-CR-W-FJG |
| | Respondent. |) |

ORDER

Pending before this Court is movant's amended motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence (Doc. No. 8, filed October 9, 2008). The Court finds that it has jurisdiction over this matter.

Movant entered into plea negotiations with the government, and pled guilty on March 16, 2007. See Doc. Nos. 111 & 112 to Case No. 06-00368. The plea agreement contained a detailed factual basis of the investigation. Doc. No. 112,¶ 3. Through the plea agreement, movant waived his right to appeal or challenge, through post-conviction motions, his guilt or sentence. Doc. #112, ¶ 15.

The issues raised by movant focus on whether defense counsel was ineffective for failing to: (1) adequately inform movant of his rights and to explain the terms of the plea agreement; (2) file a motion to suppress statements that were allegedly acquired unconstitutionally by police officers; and (3) file the notice of appeal requested by movant.

Strickland v. Washington, 466 U.S. 668, 687 (1984) held to establish ineffective assistance of counsel, defendant must show: (1) that his counsel's representation fell below an objective standard of reasonableness and (2) that counsel's errors were prejudicial. The Court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that the challenged action might be considered sound trial strategy. The reasonableness of counsel's action is judged from the perspective

of counsel at the time of trial and not by hindsight. Lockart v. Fretwell, 506 U.S. 364

(1993). Even if counsel's actions are professionally unreasonable, it may not warrant

setting aside the judgment if the error had no effect on the judgment.

JUDGMENT

The Court has reviewed movant's amended motion (Doc. No. 8) respondent's

opposition (Doc. No. 10), and movant's reply (Doc. No. 12), and Court transcripts of the

change of plea and sentencing hearings, and finds that movant's allegations are without

merit. In particular, movant has waived his post-conviction rights, and movant

acknowledged as much during his change of plea hearing. Further, movant's substantive

claims included in Claims 1 and 2 are without merit for the reasons stated in respondent's

opposition (Doc. No. 10). This Court adopts and incorporates by reference herein that

analysis as its own. Regarding Claim 3, movant concedes in his reply (Doc. No. 12) that

he never requested or instructed his counsel to file an appeal, which is confirmed by the

trial counsel's affidavit, see Doc. No. 10, Exhibit A.

For the aforesaid reasons movant's motion to vacate, set aside or correct his

sentence pursuant to 28 U.S.C. § 2255 (Doc. No. 8), filed October 9, 2008, is **DENIED**.

No evidentiary hearing will be held in this matter because the issues raised are

resolvable by the record. Furthermore, movant will be denied a motion for certificate of

appealability, in that the issues raised are not debatable among reasonable jurists, nor

could a court resolve the issues differently.

Date: 1/22/09

Kansas City, Missouri

<u>S/ FERNANDO J. GAITAN, JR.</u>

Fernando J. Gaitan, Jr.

Chief United States District Judge

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