

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JUAN LUIS LEONOR,	)	4:05CV3162
	)	
Petitioner,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
ROBERT HOUSTON,	)	
	)	
Respondent.	)	

This matter is before the court on Petitioner Juan Luis Leonor’s (“Petitioner”) Notice of Appeal, Motion for Certificate of Appealability, Motion for Leave to Proceed in Forma Pauperis (“IFP”) on Appeal, and Motion for Leave to Expand Certificate of Appealability. (Filing Nos. [85](#), [86](#), [87](#), and [95](#).) On July 5, 2007, this court dismissed Petitioner’s Amended Petition for Writ of Habeas Corpus brought pursuant to 28 U.S.C. § 2254, and entered judgment against him. (Filing Nos. [53](#) and [54](#).) On January 10, 2013, the court denied Petitioner’s “Motion for Reconsideration Under Rule 60(b).” (Filing No. [84](#).) Petitioner now seeks to appeal the court’s denial of Petitioner’s Rule 60(b) motion.

A certificate of appealability is required to appeal the denial of any motion that effectively or ultimately seeks habeas corpus relief. [U.S. v. Lambros, 404 F.3d 1034, 1036 \(8th Cir. 2005\)](#). A certificate of appealability cannot be granted unless the petitioner “has made a substantial showing of the denial of a constitutional right.” [28 U.S.C. § 2253\(c\)\(2\)](#). To make such a showing, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” [Slack v. Daniel, 529 U.S. 473, 484 \(2000\)](#).

Petitioner has failed to make a substantial showing of the denial of a constitutional right. The court is not persuaded that the issues raised in the Amended Petition or Rule 60(b) Motion are debatable among reasonable jurists, that a court

could resolve the issues differently, or that the issues deserve further proceedings. Accordingly, the court will not issue a certificate of appealability in this case.

IT IS THEREFORE ORDERED that:

1. Petitioner’s Motion for Certificate of Appealability (Filing No. [87](#)) and Motion for Leave to Expand Certificate of Appealability (Filing No. [95](#)) are denied without prejudice to reassertion before the Eighth Circuit Court of Appeals. The court will not issue a certificate of appealability in this matter.

2. Petitioner’s Motion for Leave to Proceed in Forma Pauperis on Appeal is denied as moot. (Filing No. [86](#).) Because Petitioner was previously given leave to proceed IFP, he may now “proceed on appeal in forma pauperis without further authorization” in accordance with Federal Rule of Appellate Procedure 24.

DATED this 2<sup>nd</sup> day of April, 2013.

BY THE COURT:

*Richard G. Kopf*

Senior United States District Judge

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