

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:13-CV-00052-RLV
(5:10-CR-00005-RLV-DCK-1)

HERCULANO ALBARRAN-MARTINEZ,)
)
 Petitioner,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER is before the Court on Petitioner’s motion for an order requiring the Government to respond to the claims in his motion to vacate, filed pursuant to 28 U.S.C. § 2255. Following an initial review under Rule 4(b) of the Rules Governing Section 2255 proceedings, the Court entered an Order denying and dismissing Petitioner’s Section 2255 motion on July 9, 2013. (Doc. No. 3). On July 12, 2013, the Clerk of Court docketed Petitioner’s motion for the Government to respond. (Doc. No. 5). The Court finds that Petitioner’s motion seeking a Government response should be denied as moot in light of the outright denial and dismissal of the Section 2255 motion.

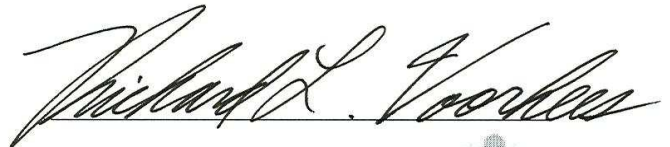
IT IS, THEREFORE, ORDERED that Petitioner’s motion seeking a Government response is **DENIED** as moot. (Doc. No. 5).

IT IS FURTHER ORDERED that the Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. See generally 28 U.S.C. § 2253(c)(2); see also *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a “petitioner must demonstrate that reasonable jurists would

find the district court's assessment of the constitutional claims debatable or wrong") (citing Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). Petitioner has failed to demonstrate both that this Court's dispositive procedural rulings are debatable, and that his Motion to Vacate states a debatable claim of the denial of a constitutional right. Slack v. McDaniel, supra. As a result, the Court declines to issue a certificate of appealability. See Rule 11(a), Rules Governing Section 2255 Proceedings for the United States District Courts, 28 U.S.C. § 2255.

IT IS SO ORDERED.

Signed: July 29, 2013



Richard L. Voorhees
United States District Judge

