

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Respondent,)	
vs.)	NO. CR-14-00280-001-M
)	NO. CIV-17-0207-M
DONOVAN GENE MERCER,)	
)	
Defendant-Movant.)	

ORDER

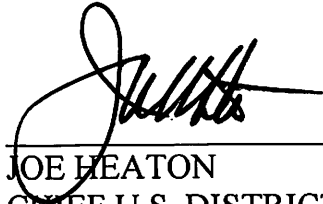
The Tenth Circuit has remanded this matter to this Court to consider whether to issue a certificate of appealability (“COA”) in relation to the Court’s July 16, 2018 denial of defendant-movant Donovan Gene Mercer’s (“Mercer”) 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence and in relation to the Court’s October 2, 2018 denial of Mercer’s Rule 59(e) motion.

Mercer is entitled to a COA only upon making a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). Mercer can make such a showing by demonstrating that the issues he seeks to raise are deserving of further proceedings, debatable among jurists of reason, or subject to different resolution on appeal. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (“[W]e give the language found in § 2253(c) the meaning ascribed it in [*Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)], with due note for the substitution of the word ‘constitutional.’”). “Where a district court has rejected the constitutional claims on the merits, . . . [t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.*

Having reviewed the file in this matter, the Court concludes Mercer has not made the requisite showing as to either the Court's July 16, 2018 decision or the Court's October 2, 2018, decision. Accordingly, a certificate of appealability is **DENIED**.

IT IS SO ORDERED.

Dated this 29th day of November, 2018.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE