IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RICCO SEARS,	)	
Petitioner,	)	
	)	Civ. No. 14-1268
v.	)	Crim. No. 08-229
	)	Crim. No. 08-297
UNITED STATES OF AMERICA,	)	
Respondent.	)	

MEMORANDUM ORDER

CONTI, Chief District Judge

I. INTRODUCTION

On March 1, 2016, the court denied the pro se motion to vacate, set aside, or correct a sentence filed by petitioner Ricco Sears ("petitioner") without prejudice, pursuant to 28 U.S.C. § 2255. (Civ. No. 14-1268, ECF Nos. 1, 2.) In error, the court did not determine whether a certificate of appealability ("COA") should issue in this case, pursuant to 28 U.S.C. § 2253 and 3d Cir. L.A.R. 22.2.

On March 15, 2016, petitioner filed a notice of appeal of this court's March 1, 2016 order denying his § 2255 motion. (Crim. No. 08-229, ECF No. 123; Crim. No. 08-297, ECF No. 96.)

On May 13, 2016, the United States Court of Appeals for the Third Circuit remanded this matter to this court for the sole purpose of either issuing a COA or stating reasons why a COA should not issue. (Crim. No. 08-229, ECF No. 125;

Crim. No. 08-297, ECF No. 98.) In response to the court of appeals' remand order, this memorandum order addresses whether a COA should issue in this case.

II. ANALYSIS

"Before an appeal may be entertained, a prisoner who was denied habeas relief in the district court must first seek and obtain a COA from a circuit justice or judge." Miller-El v. Cockrell, 537 U.S. 322, 335–36 (2003). "This is a jurisdictional prerequisite because the COA statute mandates that '[u]nless a circuit justice or judge issues a [COA], an appeal may not be taken to the court of appeals . . . .'" Id. (quoting 28 U.S.C. § 2253(c)(1)). By local rule, when a district court issues a final order denying a § 2255 motion, the court must determine whether a COA should issue. See 3d Cir. L.A.R. 22.2.

When a district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484–85 (2000). In Slack, however, the United States Supreme Court held that

> [w]here a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition

> or that the petitioner should be allowed to proceed further. In such a circumstance, no appeal would be warranted.

Id. (emphasis added).

Based upon the motion, files, and records of petitioner's case, and for the reasons set forth in the court's opinion dated March 1, 2016—see (Civ. No. 14-1268, ECF No. 1)—the court concludes that a "plain procedural bar" applies to petitioner's § 2255 motion, pursuant to 28 U.S.C. § 2255(a). Id. As the court explained in its March 1, 2016 opinion, § 2255(a) does not grant the undersigned district judge authority to vacate or alter the sentences imposed by the other district judge at criminal numbers 12-200 and 12-309. Petitioner may only "move the court which imposed [those] sentence[s] to vacate, set aside[,] or correct" them. 28 U.S.C. § 2255(a) (emphasis added). Consequently, a "plain procedural bar" applies to petitioner's § 2255 motion in this case, and a COA should not issue.[1] See Slack, 529 U.S. at 484–85.

III. CONCLUSION

For the reasons set forth in this memorandum order, it is hereby ORDERED that a COA should not issue in this case.

[1] The court notes that petitioner filed a renewed § 2255 motion in the 12-200 and 12-309 cases raising the same challenges under 28 U.S.C. § 3584(a) and Strickland v. Washington, 466 U.S. 668 (1984), that he raised in this § 2255 motion. (Crim. No. 12-200, ECF No. 490; Crim. No. 12-309, ECF No. 62.) That motion currently pends before the district judge presiding over the 12-200 and 12-309 cases.

DATED: May 13, 2016

/s/ JOY FLOWERS CONTI
Joy Flowers Conti
Chief United States District Judge

CC:

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