

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO  
3  
4

JAM L. DÍAZ-PAGÁN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 12-1980 (JAF)

(Criminal No. 11-465)

5  
6 **OPINION AND ORDER**

7 Petitioner, Jam L. Díaz-Pagán, appearing pro se, brings this petition under 28 U.S.C.  
8 § 2255 for relief from sentencing by a federal court, alleging that the sentence imposed was  
9 in violation of the laws or constitution of the United States. (Docket No. 3.) The  
10 government opposes. (Docket No. 10.)

11 **I.**

12 **Background**

13 On January 12, 2012, Petitioner entered a straight plea of guilty to three counts  
14 pending against him. (Crim. Docket Nos. 20; 31.) The first two counts were for possession  
15 with intent to distribute controlled substances, in violation of 21 U.S.C. § 841. (Crim.  
16 Docket Nos. 12; 31.) Count Three was for possession of a firearm in furtherance of a drug-  
17 trafficking crime, in violation of 18 U.S.C. § 924(c). (Crim. Docket Nos. 12 at 2; 31.) On  
18 April 11, 2012, this court sentenced to Petitioner to seventy-two months in prison: twelve  
19 months for Counts One and Two, to run concurrently with each other; and sixty months for  
20 Count Three, to run consecutively. (Crim. Docket No. 25.) Petitioner did not appeal.





1 trafficking crime.” United States v. Grace, 367 F.3d 29, 35 (1st Cir. 2004) (internal citations  
2 omitted). An affidavit filed by a Special Agent of the Bureau of Alcohol, Tobacco and  
3 Firearms (ATF) alleged that Petitioner was arrested in a Bayamón residence in possession of  
4 110 decks of heroin, 286 baggies of marijuana, and a Smith and Wesson Pistol loaded with  
5 9 mm. caliber ammunition, all found in his bedroom. (Docket No. 3-2.) At the change-of-  
6 plea hearing, the government proffered that it was prepared to prove that Petitioner  
7 acknowledged the firearm and narcotics were his. (Crim. Docket No. 31 at 13.) Petitioner  
8 accepted this proffer and pleaded guilty to all three counts. (Crim. Docket No. 31 at 15.)  
9 This was clearly enough evidence to support a conviction under § 924(c) under First Circuit  
10 precedent. See Grace, 367 F.3d at 35.

11 Finally, we note that Petitioner’s claim is also procedurally defaulted. Berthoff v.  
12 United States, 308 F.3d 124, 128 (1st Cir. 2002) (internal citations omitted). Petitioner has  
13 failed to show any cause or prejudice for his failure to raise this claim on direct appeal. The  
14 claim is, therefore, procedurally defaulted. See id.

#### 15 IV.

#### 16 Certificate of Appealability

17  
18 In accordance with Rule 11 of the Rules Governing § 2255 Proceedings, whenever  
19 issuing a denial of § 2255 relief we must concurrently determine whether to issue a  
20 certificate of appealability (“COA”). We grant a COA only upon “a substantial showing of  
21 the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make this showing, “[t]he  
22 petitioner must demonstrate that reasonable jurists would find the district court’s assessment  
23 of the constitutional claims debatable or wrong.” Miller-El v. Cockrell, 537 U.S. 322, 338  
24 (2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). While Díaz-Pagán has not

1 yet requested a COA, we see no way in which a reasonable jurist could find our assessment  
2 of his constitutional claims debatable or wrong. Díaz-Pagán may request a COA directly  
3 from the First Circuit, pursuant to Rule of Appellate Procedure 22.

4 **V.**

5 **Conclusion**

6 For the foregoing reasons, we hereby **DENY** Petitioner's § 2255 motion (Docket  
7 No. 3). Pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings, summary  
8 dismissal is in order because it plainly appears from the record that Petitioner is not entitled  
9 to § 2255 relief from this court.

10 **IT IS SO ORDERED.**

11 San Juan, Puerto Rico, this 7th day of August, 2013.

12 S/José Antonio Fusté  
13 JOSE ANTONIO FUSTE  
14 U. S. DISTRICT JUDGE