

from the Fifth Circuit Court of Appeals, which movant has not received. *See* 28 U.S.C. §§ 2255(h) and 2244(b)(3).

Additionally, in the previous motion to vacate, movant was provided an opportunity to withdraw or amend the motion before it was addressed by the court, in accordance with *Castro v. United States*, 540 U.S. 375, 377 (2003). Therefore, movant was aware the previous motion was being construed as a motion to vacate. Further, a final judgment was entered in the action on August 29, 2006. Movant's objections to the proceedings in the prior motion or to the prior determination of the court should have been brought on appeal and are not properly before this court.

Furthermore, movant's objection as to the timeliness of the motion is without merit. In the Fifth Circuit, the ruling in *Descamps* is not retroactively applicable on collateral review. *See In re Jackson*, 776 F.3d 292, 296 (5th Cir. 2015). Thus, even assuming this court has jurisdiction to entertain movant's present motion to vacate, the motion is barred by limitations. Accordingly, movant's claims should be dismissed.

Finally, movant is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the movant to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the movant need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the movant, and the severity of the penalty may be considered

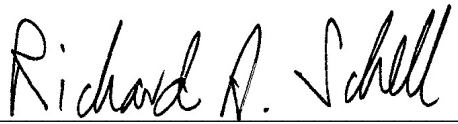
in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

Here, movant has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. The factual and legal questions advanced by movant are not novel and have been consistently resolved adversely to his position. In addition, the questions presented are not worthy of encouragement to proceed further. Therefore, movant has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of appealability shall not be issued.

ORDER

Accordingly, movant's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this the 13th day of July, 2015.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE