

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

SANTIAGO FLORES-ESCOBEDO                    §  
VS.    §    CIVIL ACTION NO. 5:14cv34  
UNITED STATES OF AMERICA                    §

ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Movant Santiago Flores-Escobedo, a federal prisoner, proceeding pro se, brought this Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255.

The Court referred this matter to the Honorable Caroline M. Craven, United States Magistrate Judge, at Texarkana, Texas, for consideration pursuant to applicable laws and orders of this Court. The magistrate judge recommends the motion be denied and dismissed.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record and pleadings. Movant filed objections to the Report and Recommendation. This requires a de novo review of the objections in relation to the pleadings and the applicable law. See FED. R. CIV. P. 72(b).

After careful consideration, the Court concludes movant's objections should be overruled. In his objections, movant, for the first time, makes a conclusory assertion that counsel was ineffective. Movant, however, has neither alleged nor demonstrated counsel's performance was deficient or affected the validity of the waiver or the plea. Further, petitioner has failed to allege or demonstrate how he was prejudiced by counsel's claimed deficient performance. A review of the sentencing hearing transcript makes clear movant made an informed decision to plead guilty to the

charge of illegal re-entry which increased his guidelines range because he faced mandatory deportation if he had pleaded guilty to a charge of possession of fraudulently obtained immigration documents, which he admitted he had. Thus, he chose the option which provided him with an opportunity to remain in the United States with his family. Further, contrary to movant's assertion otherwise, counsel did argue movant should receive a reduction for cultural assimilation. Thus, movant's objections are without merit and should be overruled.

Additionally, 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 the 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.

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.

**It is SO ORDERED.**

**SIGNED this 20th day of January, 2015.**

  
MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE