

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

JOSUE RAMIREZ,

Plaintiff,

v.

USA,

Defendant.

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CIVIL ACTION NO. 5:16-CV-00166-RWS

**MEMORANDUM ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Josue Ramirez, proceeding pro se, filed 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, for consideration pursuant to 28 U.S.C. § 636. The Magistrate Judge has submitted a Report and Recommendation recommending the motion to vacate be denied. Docket No. 5 at 6.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge along with the record and pleadings. No objections to the Report and Recommendation of United States Magistrate Judge have been filed.

The Court finds no plain error in the Magistrate Judge’s findings. Specifically, the Court agrees that consideration of movant’s ground for review is barred by the waiver set forth in Paragraph 11 of his Plea Agreement. Additionally, the Court agrees that movant’s ground for review is without merit and is not cognizable in this proceeding as it attacks the technical application of the United States Sentencing Guidelines. Accordingly, finding no plain error in the findings of fact and conclusions of law of the Magistrate Judge, the Court **ADOPTS** the Magistrate

Judge's findings and conclusions as those of the Court. It is hereby **ORDERED** that this motion to vacate, set aside, or correct sentence is **DENIED WITH PREJUDICE**.

Additionally, the Court finds that movant is not entitled to a certificate of appealability. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. See 28 U.S.C. § 2253. The standard for a certificate of appealability 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). To make a substantial showing, the movant need not establish that he would 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 should be 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 (2000).

In this case, movant has not shown that the issues he raised are subject to debate among jurists of reason. The questions presented are not worthy of encouragement to proceed further. The movant has therefore failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of appealability will not be issued.

SIGNED this 14th day of June, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE