

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JOSE GUADALUPE CEBREROS, Defendant-Appellant.	No. 17-56843 D.C. Nos. 3:17-cv-02310-JM 3:01-cr-02788-JM-1 Southern District of California, San Diego ORDER (Filed Feb. 22, 2018)
--	--

Before: Trott and Fisher, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that “jurists of reason would find it debatable whether the [section 2255 motion] 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 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

In order for a district court to consider a second or successive 28 U.S.C. § 2255 motion, this court must first authorize the district court to consider that motion. *See* 28 U.S.C. §§ 2244(b)(3), 2255(h). The Clerk shall serve this order and a copy of the standard form

App. 2

application for leave to file a second or successive motion on appellant.

DENIED.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES
OF AMERICA,
Plaintiff,
vs.
JOSE G. CEBREROS,
Defendant.

CASE NO. 01cr2788 JM
CIVIL NO. 17cv2310 JM
ORDER
(Filed Dec. 14, 2017)

Defendant Jose G. Cebreros moves for the issuance of a certificate of appealability pursuant to 28 U.S.C. §2253. “A certificate of appealability may issue [] only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §2253(c)(2). On the merits, Defendant contends that the 1988 state conviction for felony possession of cocaine that was used as a predicate for the imposition of the 20-year mandatory sentence in the present case has been reduced to a misdemeanor pursuant to Proposition 47, enacted by the voters on November 4, 2014. Consequently, Defendant concludes, without citation to any binding or persuasive authority, that his due process rights were violated by the imposition of the 20-year mandatory minimum sentence. Accordingly, Defendant seeks resentencing.

The court concludes that Defendant fails to make a substantial showing of the denial of a constitutional right and, therefore, denies the request for a certificate of appealability. Defendant specifically recognizes that

App. 4

it is an open question whether a federal sentence is impacted by a state law that, serving as a predicate for a sentencing enhancement, is subsequently reduced from a felony to a misdemeanor. (Motion at p.6:17-21); *McNeill v. United States*, 563 U.S. 816, 825 n.1 (2011). As an open question on collateral review, Defendant necessarily fails to make a substantial showing of the denial of a constitutional right.¹

IT IS SO ORDERED.

DATED: December 14, 2017

/s/ Jeffrey T. Miller
JEFFREY T. MILLER
United States District Judge

cc: All parties

¹ While Defendant contends that the modification of the state conviction constitutes both “new evidence and new law,” (Motion at p.8:18), the court notes that newly discovered evidence refers to evidence “that no reasonable factfinder would have found the movant guilty of the offense” and new law refers to “a new rule of constitutional law, made retroactive to cases on collateral review.” 28 U.S.C. §2255(h).

App. 5

[SEAL]

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

Jose Guadalupe Cebreros Plaintiff, V. USA Defendant.	Civil Action No. <u>17CV2310-JM</u> JUDGMENT IN A CIVIL CASE
--	--

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED:

The motion brought pursuant to 28 USC 2255 for failure to obtain certification from the Ninth Circuit.

Date: 11/21/17 **CLERK OF COURT**
JOHN MORRILL,
Clerk of Court
By: s/ J. Petersen
J. Petersen, Deputy

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JOSE GUADALUPE CEBREROS, Defendant-Appellant.	No. 17-56843 D.C. Nos. 3:17-cv-02310-JM 3:01-cr-02788-JM-1 Southern District of California, San Diego ORDER (Filed Mar. 30, 2018)
--	--

Before: CLIFTON and CHRISTEN, Circuit Judges.

The motion for reconsideration (Docket Entry No. 4) is denied. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.
