

A T T A

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. MARIO BENITEZ-PINEDA, a/k/a Cuzuco, a/k/a Chaparro, Defendant - Appellant.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

742 Fed. Appx. 792; 2018 U.S. App. LEXIS 33129

No. 18-6509

October 9, 2018, Submitted

November 26, 2018, Decided

Notice:

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Editorial Information: Subsequent History

Rehearing denied by, Rehearing, en banc, denied by United States v. Benitez-Pineda, 2019 U.S. App. LEXIS 3739 (4th Cir., Feb. 5, 2019)

Editorial Information: Prior History

{2018 U.S. App. LEXIS 1}Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. (1:12-cr-00273-LO-1; 1:16-cv-00565-LO). Liam O'Grady, District Judge.

Disposition:

DISMISSED.

Counsel Mario Benitez-Pineda, Appellant, Pro se.

Judges: Before NIEMEYER and HARRIS, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Opinion

{742 Fed. Appx. 792} PER CURIAM:

Mario Benitez-Pineda seeks to appeal the district court's order denying as untimely his 28 U.S.C. § 2255 (2012) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000); see also *Miller-El v. Cockrell*, 537 U.S. 322, 336-38, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Benitez-Pineda{2018 U.S. App. LEXIS 2} has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are

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adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

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FILED: February 5, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6509
(1:12-cr-00273-LO-1)
(1:16-cv-00565-LO)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARIO BENITEZ-PINEDA, a/k/a Cuzuco, a/k/a Chaparro

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Harris, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

MARIO BENITEZ-PINEDA,)	
)	
)	
<i>Petitioner,</i>)	Case No. 1:12-cr-273
)	
v.)	Hon. Liam O'Grady
UNITED STATES OF AMERICA,)	
)	
)	
<i>Respondent.</i>)	
)	

ORDER

This matter comes before the Court on remand from the United States Court of Appeals for the Fourth Circuit. *See* Dkt. 258. The Court of Appeals remanded for the limited purpose of permitting this Court to supplement the record with an order granting or denying a certificate of appealability. Therefore, the Court hereby denies a certificate of appealability to Petitioner Mario Benitez-Pineda for this Court's order denying Petitioner's Motion to Vacate, for the reasons stated in that order. *See* Dkt. 253.

May 11 2018
Alexandria, Virginia

VOG

Liam O'Grady
United States District Judge