

APPENDIX "B"

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6849

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CARLOS GERMAN LEMA NOGALES, a/k/a Carlos Felix Torres De La Villa,
a/k/a Carlos German Lema-Nogales, a/k/a German Lema, a/k/a Mark Ruiz Alvarez,
a/k/a Oberto Rubi, a/k/a Charlie,

Defendant - Appellant.

No. 18-6852

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CARLOS GERMAN LEMA NOGALES, a/k/a Carlos Felix Torres De La Villa,
a/k/a Carlos German Lema-Nogales, a/k/a German Lema, a/k/a Mark Ruiz Alvarez,
a/k/a Oberto Rubi, a/k/a Charlie,

Defendant - Appellant.

Appeals from the United States District Court for the District of South Carolina, at
Greenville. J. Michelle Childs, District Judge. (6:12-cr-00328-JMC-2; 6:15-cv-03044-
JMC)

a/k/a Carlos German Lema-Nogales, a/k/a German Lema, a/k/a Mark Ruiz
Alvarez, a/k/a Oberto Rubi, a/k/a Charlie

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is
denied and the appeals are dismissed.

This judgment shall take effect upon issuance of this court's mandate in
accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Submitted: December 31, 2018

Decided: January 9, 2019

Before MOTZ and KEENAN, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Carlos German Lema Nogales, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Carlos German Lema Nogales seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion and denying his motion to reconsider the court's denial of his motion for discovery and expansion of the record. 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 (2000); see *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (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 Nogales has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We deny leave to proceed in forma pauperis and deny as moot Nogales' motion for transcripts at the Government's expense. We dispense with oral

^{*} Because it was filed more than 28 days after the entry of the district court's order, we construe Nogales' motion to reconsider as filed pursuant to Fed. R. Civ. P. 60(b). A certificate of appealability is required for the order to be appealable. See *Reid v. Angelone*, 369 F.3d 363, 369 (4th Cir. 2004), *abrogated in part by United States v. McRae*, 793 F.3d 392, 400 & n.7 (4th Cir. 2015).

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NOTE: PG #4, WAS MISPLACED DURING INSTITUTIONAL SHAKEDOWN.

APPENDIX "A"

FILED: April 16, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6849 (L)
(6:12-cr-00328-JMC-2)
(6:15-cv-03044-JMC)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CARLOS GERMAN LEMA NOGALES, a/k/a Carlos Felix Torres De La Villa,
a/k/a Carlos German Lema-Nogales, a/k/a German Lema, a/k/a Mark Ruiz
Alvarez, a/k/a Oberto Rubi, a/k/a Charlie

Defendant - Appellant

No. 18-6852
(6:12-cr-00328-JMC-2)
(615-CV-03044-JMC)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CARLOS GERMAN LEMA NOGALES, a/k/a Carlos Felix Torres De La Villa,
a/k/a Carlos German Lema-Nogales, a/k/a German Lema, a/k/a Mark Ruiz
Alvarez, a/k/a Oberto Rubi, a/k/a Charlie

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX "D"

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

United States of America,)	
)	
Plaintiff,)	
)	
v.)	
)	
Carlos German Lema Nogales,)	
)	
Defendant.)	
)	

Criminal Action No.: 6:12-cr-00328-JMC

ORDER AND OPINION

This matter is before the court pursuant to Defendant Carlos German Lema Nogales' *pro se* Motion for Discovery and Expansion of Record (ECF No. 793). For the reasons set forth below, the court **DENIES** Defendant's Motion (*id.*).

I. FACTUAL AND PROCEDURAL BACKGROUND

On January 13, 2014, Defendant entered a guilty plea to Conspiracy to Distribute a Controlled Substance. (ECF No. 594.) On August 3, 2015, Defendant filed a Section 2255 Motion claiming ineffective assistance of counsel. (ECF No. 714.) On May 8, 2017, Defendant filed a Motion for Discovery and Expansion of Record. (ECF No. 793.) In support of his Motion, Defendant asserts that "discovery will allow him to develop the facts required to further support the claims raised in his Section 2255 Motion." (ECF No. 793 at 1.) In addition, Defendant states that "when the new evidence is presented, it should be added to the record pursuant to Rule 7 of the Rules Governing Section 2255 Proceedings . . . the expanded record will make any subsequent evidentiary hearings easier and more efficient." (*Id.* at 3.) Specifically, Defendant requests: (1) "an independent translation of the conversation which the government claims as their primary evidence and alleges to be in "coded" Spanish between Defendant and one of the government's criminal informants . . . [which] would prove that Defendant at no point agreed to be involved in

a scheme proposed by the criminal informant; and (2) “perjured testimony [by criminal informants] which was used initially to obtain a warrant and tap Defendant’s phone.” (*Id.* at 2.)

As to the request for an independent translation, Defendant posits that no independent translation was procured by his defense attorney despite his repeated requests. (ECF No. 793 at 2.) On January 10, 2018, the court filed a Text Order stating that before it ruled on Defendant’s Motion in its entirety, it requested that Defendant be specific as to which conversation he was referring to in his request for an independent translation. (ECF No. 799.) On January 29, 2018, Defendant responded to the court’s Order, referencing which incident he was requesting for an independent translation. (ECF No. 802.)

II. LEGAL STANDARD

Pursuant to Rule 6(a) of the Rules Governing Section 2255 Proceedings, a defendant must seek leave of court and demonstrate “good cause” before he is entitled to any form of discovery. Additionally, the rule specifically provides that “[a] party requesting discovery must provide reasons for the request,” and that the request “must specify any requested documents.” *See* Rule 6(b) of the Rules Governing Section 2255 Proceedings. The Supreme Court has concluded that “good cause” for discovery has been shown “where specific allegations before the court show reason to believe that the defendant may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief.” *See Bracy v. Gramley*, 520 U.S. 899, 908-909 (1997). Once “good cause” has been shown under Rule 6, “it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.” *Id.* at 109.¹ Rule 7 of the Rules Governing Section 2255 Proceedings allows for the new evidence elicited through discovery to be added to the record.

¹ Although *Bracy* involved discovery in habeas corpus proceedings pursuant to Rule 6 of the Rules Governing Section 2254 Proceedings, its discussion of the “good cause” standard is applicable to

III. ANALYSIS

After reviewing the parties' respective memoranda, the record of the underlying proceedings, and inquiring into the translation at issue, the court finds that Defendant has not shown good cause to grant his Motion for Discovery. The court is not persuaded that there was an error in the translation that would warrant another person to translate the same recording. Moreover, the court confirmed that three separate persons were used to translate the recordings. As to the possible perjured testimony by criminal informants, Defendant only espouses that his "defense attorney failed to investigate statements by criminal informants that *could* have been perjured." (ECF No. 793 at 2) (emphasis added). The court finds that Defendant's request for possible perjured testimony by criminal informants is a fishing expedition, and therefore does not meet the specificity requirement or demonstrate good cause, as required to obtain discovery. Therefore, the court **DENIES** Defendant's Motion for Discovery and Expansion of Record (ECF No. 793).

IT IS SO ORDERED.



United States District Judge

February 12, 2018
Columbia, South Carolina

Rule 6 of the Rules Governing Section 2255 Proceedings. *See United States v. Roane*, 378 F.3d 382 (4th Cir. 2004).