

# APPENDIX :

# A

# United States Court of Appeals For the First Circuit

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No. 17-1823

JOSE VIZCARRONDO-CASANOVA,

Petitioner, Appellant,

v.

UNITED STATES,

Respondent, Appellee.

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Before

Torruella, Lynch and Kayatta,  
Circuit Judges.

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## JUDGMENT

Entered: June 7, 2019

Pro se petitioner Jose Vizcarronda-Casanova seeks a certificate of appealability ("COA") to appeal from the denial of his 28 U.S.C. § 2255 motion as untimely. As an initial matter, petitioner's motion for appointment of counsel is denied. When a district court denies a habeas petition on procedural grounds, "a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the procedural ruling is correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

We have carefully reviewed relevant portions of the record and petitioner's filings, including his filing pursuant to Fed. R. App. P. 28(j), and conclude that the petitioner has not made the requisite showing. See id.; see also Butterworth v. United States, 775 F.3d 459, 468-69 (1st Cir. 2015) ("It is black-letter law that arguments not presented to the trial court are, with rare exceptions, forfeited on appeal.") (internal quotation marks and brackets omitted).

Accordingly, the application for a COA is denied and the appeal is terminated.

**APPENDIX:**

**B**

# United States Court of Appeals For the First Circuit

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No. 17-1823

JOSE VIZCARRONDO-CASANOVA,

Petitioner, Appellant,

v.

UNITED STATES,

Respondent, Appellee.

---

Before

Howard, Chief Judge,  
Torruella, Lynch, Thompson,  
Kayatta and Barron, Circuit Judges.

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## ORDER OF COURT

Entered: August 13, 2019

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be DENIED.

By the Court:

Maria R. Hamilton, Clerk

cc:

Jose Vizcarrondo-Casanova  
Mariana E. Bauza Almonte

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

**Plaintiff,**

v.

JOSÉ VIZCARRONDO-CASANOVA [6],

**Defendant.**

**Civil No. 15-2918 (FAB)**  
re  
**Criminal No. 09-228 [6]**

**JUDGMENT**

In accordance with the Amended Order entered today (Docket No. 20), this case is **DISMISSED with prejudice.**

This case is now closed for statistical purposes.

**IT IS SO ORDERED.**

San Juan, Puerto Rico, June 29, 2017.

s/ Francisco A. Besosa  
FRANCISCO A. BESOSA  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

JOSÉ VIZCARRONDO-CASANOVA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CIVIL NO.: 15-2918 (FAB)  
Related to: 09-228 (FAB)

**REPORT AND RECOMMENDATION**

Pending before the court is petitioner José Vizcarrondo-Casanova's motion to vacate, set aside or correct sentence under Title 28, United States Code, Section 2255 ("§2255 motion"). ECF No. 1. In his §2255 motion, petitioner raises the following issues without elaboration:

GROUND ONE: "WHETHER MOVANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT PRE-TRIAL STAGE OF PROCEEDINGS?"

...

[Please see; "**Memorandum of Law, Points, & Authorities**" for a complete illustration and in-depth analysis of former defense counsel's deficient and subpar performance during pre-trial stage of criminal proceedings herein being challenged.]

Id. at 4 (emphasis in original).

GROUND TWO: "WHETHER MOVANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL DURING TRIAL STAGE OF PROCEEDINGS?"

...

[Please see; "**Memorandum of Law, Points, & Authorities**" for a complete illustration and complete analysis of former defense counsel's subpar and deficient performance during trial phase/stage of criminal proceedings.]

Id. at 5 (emphasis in original).

GROUND THREE: "WHETHER MOVANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL DURING SENTENCING STAGE OF PROCEEDINGS?"

...  
[Please see; "**Memorandum of Law, Points, & Authorities**" for a complete illustration of former defense counsel's subpar/deficient performance during the sentencing stage of criminal proceedings.]

Id. at 7 (emphasis in original).

GROUND FOUR: "WHETHER MOVANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL DURING APPELLATE STAGE OF PROCEEDING?"

...  
[Please see; "**Memorandum of Law, Points, & Authorities**" for a complete in-depth and specific instances of analysis of appellate counsel's subpar/deficient performance, which collectively deprived Movant of his right to the effective assistance of counsel at appellate stage of proceedings.]

Id. at 8 (emphasis in original).

On November 23, 2015, petitioner filed a motion requesting thirty days to file a memorandum of law in support of his §2255 motion. ECF No. 2. This motion was granted by the court. ECF No. 5. As of February 23, 2016, however, petitioner's memorandum in support of his §2255 motion had not been filed. Therefore, on said date the court issued an order granting petitioner until March 8, 2016, to show cause as to why the §2255 motion should not be summarily denied and/or dismissed due to petitioner's failure to file a memorandum of law in support of his allegations. ECF No. 8. As of today, petitioner has neither filed the memorandum of law nor a motion in compliance with the order to show cause.

"On motion for postjudgment relief, [c]onclusory allegations unsupported by specifics are insufficient to require a court to grant an evidentiary hearing." U.S. v. Michaud, 925 F.2d 37, 38 (1st Cir. 1991). Furthermore, "summary dismissal is appropriate where the grounds for relief are not cognizable under §2255 or are merely bald assertions without specific and particular factual allegations." Druan v. United States, 7 F.3d 218 (1st Cir. 1993) (unpublished). Petitioner in the case

presently before the court has been given ample opportunity to submit his memorandum in support of his §2255 motion, which by itself merely raises conclusory allegations without a specific factual basis.

For the foregoing reasons, it is hereby RECOMMENDED that petitioner's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 be dismissed.

IT IS SO RECOMMENDED.

The parties have fourteen (14) business days to file any objections to this report and recommendation. Failure to file same within the specified time waives the right to appeal this report and recommendation. Fed. R. Civ. P. 72(b)(2); Fed. R. Civ. P. 6(c)(1)(B), and Local Rule 72(d); see also 28 U.S.C. § 636(b)(1); Henley Drilling Co. v. McGee, 36 F.3d 143, 150-151 (1st Cir. 1994); United States v. Valencia, 792 F.2d 4 (1st Cir. 1986).

In San Juan, Puerto Rico, this 8<sup>th</sup> day of April, 2016.

s/Marcos E. López

United States Magistrate Judge