

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT



No. 19-50224

A True Copy  
Certified order issued Aug 13, 2019

UNITED STATES OF AMERICA,

*Tyler W. Cayer*  
Clerk, U.S. Court of Appeals, Fifth Circuit  
Plaintiff-Appellee

v.

MAURO CASTANEDA PALACIO,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas

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O R D E R:

Mauro Castaneda Palacio, federal prisoner # 39711-180, was convicted of attempting to entice a minor to engage in sexual activity and was sentenced to 120 months of imprisonment, to be followed by 10 years of supervised release. His term of supervised release commenced in July 2016 and was revoked in 2017. He was sentenced to 24 months of imprisonment, to be followed by 10 years of supervised release. Castaneda Palacio moves for a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2255 motion challenging the revocation of supervised release.

The district court determined that Castaneda Palacio's challenge to the sentence imposed in connection with his conviction was subject to dismissal for lack of jurisdiction because it was successive. Regarding Castaneda Palacio's

remaining claims challenging the validity of his supervised release violation warrant and the conditions of supervised release, the district court found that they were procedurally defaulted and that Castaneda Palacio failed to show cause and prejudice and a fundamental miscarriage of justice.

In this court, Castaneda Palacio reasserts the merits of his claims. Specifically, he argues that his Fourth Amendment rights were violated because the supervised release violation warrant was not supported by probable cause. He also argues that the district court erred in finding that the conditions of supervised release were not unreasonable, stating that they are vague and unjustified. He has also filed a motion to supplement the COA motion. His motion to file a supplement is GRANTED.

To obtain a COA, Castaneda Palacio must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When the district court denies relief based on procedural grounds, a movant satisfies this standard by showing 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 district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Castaneda Palacio has not made the requisite showing.

Accordingly, IT IS ORDERED that Castaneda Palacio’s motion for a COA is DENIED. His motion for the appointment of counsel is also DENIED.

/s/ Jennifer Walker Elrod

JENNIFER WALKER ELROD  
UNITED STATES CIRCUIT JUDGE

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Before DENNIS, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:

A member of this panel previously denied appellant's motions for a certificate of appealability and to appoint counsel and granted appellant's motion to file a supplemental certificate of appealability. The panel has considered appellant's motion for reconsideration. IT IS ORDERED that the motion is DENIED.