

E.D.N.Y. – C. Islip
17-cv-4035
9-cr-653
Feuerstein, J.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 27th day of April, two thousand twenty.

Present:

Guido Calabresi,
Richard C. Wesley,
Richard J. Sullivan,
Circuit Judges.

Michael J. McGowan,

Petitioner-Appellant,

v.

18-97

United States of America,

A2

Respondent-Appellee.

Appellant, pro se, moves for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because Appellant has not shown that “jurists of reason would find it debatable whether the district court was correct in its procedural ruling” as to the untimeliness of the Appellant’s motion filed pursuant to 28 U.S.C. § 2255. *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk of Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHAEL J. McGOWAN,

Petitioner, ORDER
-against-
09-cr-653 (SJF)
17-cv-4035 (SJF)

UNITED STATES OF AMERICA,

Respondent.

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FEUERSTEIN, District Judge:

Pursuant to 28 U.S.C. § 2255 and pro se, Petitioner Michael J. McGowan (“McGowan”) petitioned this Court to vacate his conviction and sentence of imprisonment, primarily arguing ineffective assistance of counsel. (See ECF No. 66; hereafter, the “§ 2255 Petition”.) The United States of America filed a response in opposition to McGowen’s § 2255 Petition. (See ECF No. 76.)

On October 31, 2017, the Court held a hearing on the § 2255 Petition, at which McGowan was represented by counsel. At the hearing, the Court heard testimony from: (1) Attorney Randi L Chavis, McGowan’s public defender who represented McGowan at his preliminary hearing, arraignment and plea, and at his sentencing;¹ (2) Attorney James Glasser who represented McGowan on appeal; and (3) McGowan. After the close of testimony and hearing the parties’ closing arguments, and for the

reasons stated on the record, the Court found the § 2255 Petition was untimely, which was a sufficient basis to dismiss the Petition, and further found no merit in the arguments raised in the § 2255 Petition, thereby warranting its dismissal.

1. Since McGowan entered a guilty plea, there was no trial. (See § 2255 Petition at ¶5(a)(2).)

Accordingly, IT IS ORDERED McGowan's § 2255 Petition is denied and the proceeding is dismissed. As McGowan has failed to make a substantial showing of a violation of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. §2253(c); *see also Miller-El v. Cockrell*, 537 U.S. 322, 336, 123 S. Ct. 1029 (2003); *Contino v. United States*, 535 F.3d 124, 127 (2d Cir. 2008). McGowan has a right to seek a certificate of appealability from the United States Court of Appeals for the Second Circuit. See 28 U.S.C. § 2253. The Clerk of Court is directed to serve notice of entry of this Order on all parties in accordance with Rule 77(d)(1) of the Federal Rules of Civil Procedure and to close this case.

SO ORDERED this 9th day of November 2017 at Central Islip, New York.

s/ Sandra J. Feuerstein
Sandra J. Feuerstein
United States District Judge