

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 14 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PERCY LOVE III,

Defendant-Appellant.

No. 21-16517

D.C. Nos. 2:21-cv-01193-TLN
2:13-cr-00306-TLN-1

Eastern District of California,
Sacramento

ORDER

Before: PAEZ and HURWITZ, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown 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); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

DENIED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
PERCY LOVE III,
Defendant.

No. 2:13-cr-00306-TLN

ORDER

This matter is before the Court on Defendant Percy Love III's ("Defendant") Motions for an Extension of Time to File a Motion Pursuant to 28 U.S.C. § 2255 ("§ 2255"). (ECF Nos. 299, 300.) For the reasons set forth below, the Court DENIES Defendant's motions.

On December 23, 2014, a jury found Defendant guilty of five counts in a five-count Superseding Indictment. (ECF No. 172.) Counts 1, 2, and 4 charged Sex Trafficking by Force, Fraud, or Coercion, in violation of 18 U.S.C. § 1591(a)(1). (*Id.*) Count 3 charged Sex Trafficking of Children by Force, Fraud, or Coercion, and Count 5 charged Attempted Sex Trafficking of Children by Force, Fraud, or Coercion, both in violation of 18 U.S.C. § 1591(a)(1). (*Id.*) By written order filed on October 9, 2015, the Court vacated the conviction and granted Defendant's motion for a new trial as to Count 5. (ECF No. 229.)

At the sentencing hearing on February 2, 2016, the Court dismissed Count 5 and sentenced Defendant to 420 months of imprisonment on each of Counts 1, 2, 3, and 4, to be

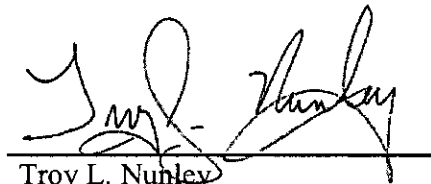
1 served concurrently. (ECF No. 247.) The Court also sentenced Defendant to a life term of
2 supervised release. (*Id.*) Defendant appealed his conviction. (ECF No. 249.) On November 21,
3 2018, the Ninth Circuit affirmed the judgment. (ECF No. 285.) Defendant filed a petition for
4 panel rehearing on December 26, 2018, and the panel voted to deny the petition on January 9,
5 2019. The Ninth Circuit issued its mandate on January 17, 2019. (ECF Nos. 285, 286.)

6 Defendant, a federal prisoner proceeding *pro se*, filed a previous motion for extension of
7 time to file a § 2255 motion that was dated April 1, 2020 and filed on this Court's docket on April
8 10, 2020. (ECF No. 295.) The Court denied Defendant's motion on May 5, 2020. (ECF No.
9 296.) Defendant raises the same argument in the present motions that the Court rejected in its
10 prior order — that the Court should grant an extension for filing a § 2255 motion because
11 COVID-19 caused prison lockdowns and other delays. (*See generally* ECF Nos. 299, 300.)
12 However, Defendant indicates he was never served with the Court's prior order and does not
13 know if the Court granted or denied his original motion. (ECF No. 299 at 1.) The Court has
14 reviewed the docket in this case, and it appears Defendant was never served with a copy of this
15 Court's order.

16 Accordingly, the Court DENIES Defendant's renewed motions (ECF Nos. 299, 300) for
17 the same reasons already discussed in the Court's prior order (ECF No. 296). The Court directs
18 the Clerk of Court to serve Defendant, who is appearing *pro se*, with both this Order and the
19 Order filed May 5, 2020 (ECF No. 296).

20 IT IS SO ORDERED.

21 Dated: August 16, 2021

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23 Troy L. Nunley
24 United States District Judge
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
PERCY LOVE III,
Defendant.

No. 2:13-cr-00306-TLN

ORDER

This matter is before the Court on remand from the Ninth Circuit Court of Appeals for the limited purpose of granting or denying a certificate of appealability for Defendant Percy Love III ("Defendant"). (ECF No. 305.)

Defendant filed multiple *pro se* motions for extensions of time to file a 28 U.S.C. § 2255 ("§ 2255") motion. (ECF Nos. 295, 297.) Defendant sought these extensions based on COVID-19 lockdowns in his prison facility and other delays. (*See id.*) The Court denied Defendant's initial motion by written order, stating that Defendant had not yet filed a viable § 2255 motion and the motion for extension of time did not contain sufficient factual allegations to be construed as a § 2255 motion. (ECF No. 296 at 4–5.) Defendant was never served with the Court's order and thus filed two subsequent, substantially identical motions for extensions of time to file a § 2255 motion. (ECF Nos. 299, 300.) The Court denied these requests by written order for the

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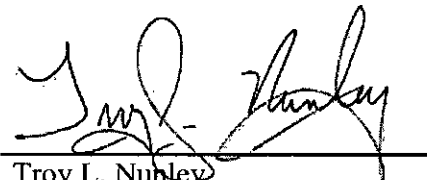
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1 same reasons articulated in the previous order and directed the Clerk of Court to serve Defendant
2 with both orders. (ECF No. 301.) Defendant appealed. (ECF No. 302.)

3 A certificate of appealability may be issued “only if the applicant has made a substantial
4 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In the instant case,
5 Defendant never presented factual allegations — or even any argument — as to how his
6 constitutional rights were violated. Accordingly, the Court declines to issue a certificate of
7 appealability. The Clerk of the Court is directed to serve a copy of this Order on the Ninth
8 Circuit in Case No. 21-16517 and Defendant.

9 IT IS SO ORDERED.

10 Dated: October 28, 2021

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14 Troy L. Nuhley
15 United States District Judge
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**Additional material
from this filing is
available in the
Clerk's Office.**

