

APPENDIX

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APPENDIX

I Jose Agapito Salas in accordance with Sup. Ct. R. 34.4 I certify that the following documents are contained in the appendencies ahead, [Sup. Ct. R. 33.1(h)]:

APPENDIX A: Final Judgment Of the Fifth Circuit United States Court Of Appeals, Appeal No. 21-11081, Denying Jose Agapito's Request For a Certificate Of Appealability on May 12, 2022.

APPENDIX B: Final Judgment Of the United States District Court, Northern District Of Texas, Lubbock Division, Denying & Dismissing With Prejudice Jose Agapito Salas 28 U.S.C. §2255 Motion To Vacate, Set Aside, or Correct Sentence on September 13, 2021.

Other:

APPENDIX C: Appeals Court Docket Sheet for the Fifth Circuit United States Court Of Appeals, USA v. Salas, Appeals No.21-11081.

APPENDIX: A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

May 12, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE AGAPITO SALAS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:21-CV-103

ORDER:

Jose Salas, federal prisoner # 56804-177, moves for a certificate of appealability (COA) to appeal the district court's denial of his petition for habeas corpus under 28 U.S.C. § 2255. In his petition, Salas alleges that the district court erred by failing to list its factual findings and conclusions of law and by denying his petition without conducting an evidentiary hearing.

To obtain a COA to appeal the denial of a § 2255 petition, the petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). “A petitioner satisfies this standard by demonstrating that jurists

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of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327. If the district court denies relief on procedural grounds, a COA should issue if the movant demonstrates, 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 district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Salas fails to make the requisite showing on either ground. "[T]he motion and the files and records of the case conclusively show that [Salas] is entitled to no relief." § 2255(b). Accordingly, IT IS ORDERED that Appellant's motion for a certificate of appealability is DENIED.

Cory T. Wilson
CORY T. WILSON
United States Circuit Judge

APPENDIX: B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

JOSE A. SALAS,)
v.)
Movant,) CIVIL ACTION NO.
v.) 5:21-CV-103-C
UNITED STATES OF AMERICA,) CRIMINAL NO.
v.) (5:17-CR-090-C-01)
Respondent.)

ORDER

On May 3, 2021, Jose A. Salas (“Movant”) filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. Respondent filed its Response on July 6, 2021, and Movant filed a Reply thereto on July 23, 2021.

On July 13, 2018, Movant was sentenced to a total of 262 months in prison and a five-year term of supervised release after pleading guilty, in accordance with a plea agreement, to one count of distribution and possession with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(viii). This is Movant's first Section 2255 Motion.

Within his Motion, Movant claims that he was wrongly convicted and sentenced based upon an erroneous drug quantity and that, as a result, his guilty plea was unknowing and involuntary. Movant further claims that he received ineffective assistance of counsel.

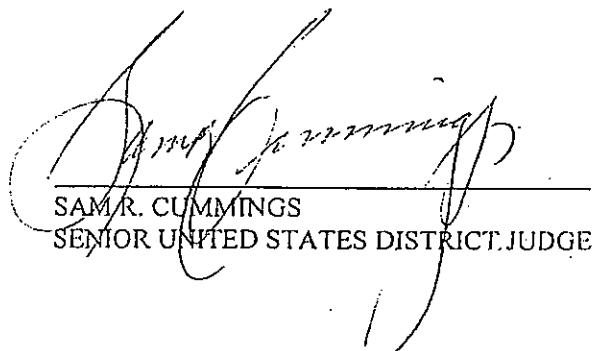
Having considered Movant's Motion, Respondent's Response, Movant's Reply, and all relevant records, the Court is of the opinion that Movant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody should be **DENIED** and

DISMISSED with prejudice for the reasons stated in Respondent's thorough and well-drafted Response. All relief not expressly granted is DENIED.

Pursuant to Rule 22 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2253(c), this Court finds that a certificate of appealability is denied. For the reasons set forth herein, Movant has failed to show that a reasonable jurist would find: (1) this Court's "assessment of the constitutional claims debatable or wrong," or (2) "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

SO ORDERED.

Dated September 13, 2021.



SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**