

ORIGINAL

TO: CLERK'S OFFICE OF U.S. SUPREME COURT
Mr. Scott S. Harris, Clerk
Mr. Michael Duggan, Clerk
1 First Street N.E.
Washington, DC 20543

FROM: Mr. Mike Moreno Quintana #70538-408
U.S. Penitentiary
P.O. Box 1000
Leavenworth, Kansas 66048

FILED
JUN 29 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

**RE: REQUEST EXTENSION OF TIME TO FILE BEFORE
THE COURT WRIT OF CERTIORARI FROM THE
DENIAL OF QUINTANA'S CERTIFICATE OF
APPEALABILITY IN CASE NUMBER 21-1837**

DATE: June 28, 2022

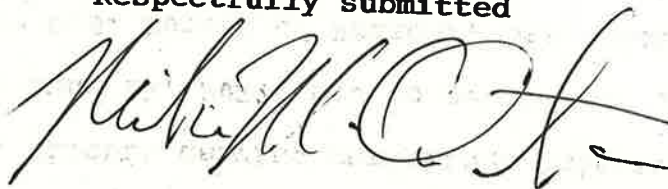
CLERKS OF U.S. Supreme Court:

Petitioner Quintana, respectfully request the court to [GRANT], sixty days extension of time from the [ORDER], entered by the U.S. Appeals Court for the Sixth Circuit denying petitioner Quintana's Certificate of Appealability on June 17, 2022. Due to petitioner Quintana current incarceration in the U.S. Bureau of Prisons, Leavenworth, Kansas and the fact petitioner is proceeding before the court [Pro-Se]. With limited available time to utilize the law library, will not allow Quintana to timely file upon the court petitioner's writ of certiorari.

According to the filing date of June 17, 2022, Quintana, initial writ is due September 17, 2022, Quintana seeks an additional sixty days which will extend the September 17, 2022 date until November 17, 2022.

WHEREFORE, petitioner Quintana, respectfully request the court to grant petitioner Quintana's request for 60, days extension of time to timely file his writ of certiorari before the U.S. Supreme Court.

Respectfully submitted



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CERTIFICATE OF SERVICE

I, hereby certify under penalty of perjury as delineated in Title 28 U.S.C. §1746, that the foregoing letter to the Clerk's Office of the U.S. Supreme Court, is true and correct PURSUANT TO Rule 29, and mailed to the adverse parties U.S. Attorney's Office, through U.S. Postal mail first class postage prepaid and deposited in the U.S. Postal mailbox on this;

_____ day of _____ 2022.

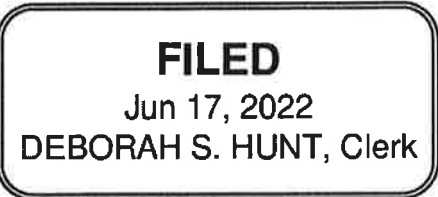
**CLERK'S OFFICE OF THE SUPREME COURT
1 First Street N.E.
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**UNITED STATES ATTORNEY'S OFFICE
Assistant U.S. Attorney
The Law Building
330 Ionia Avenue, NW
P.O. Box 208
Grand Rapids. MI. 49501-0208**

**Mr. Mike Moreno Quintana#70538-408
U.S. Penitentiary
P.O. Box 1000
Leavenworth, Kansas 66048**

No. 21-1837

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT



MIKE MORENO QUINTANA,)
)
 Petitioner-Appellant,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent-Appellee.)

ORDER

Before: MOORE, Circuit Judge.

Mike Moreno Quintana, a federal prisoner proceeding pro se, appeals the district court’s judgment denying his motion to vacate filed under 28 U.S.C. § 2255. Quintana has moved for a certificate of appealability.

A jury found Quintana guilty of conspiring to distribute or possess with intent to distribute methamphetamine and distributing methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. The district court sentenced him to concurrent prison terms of 240 months. We affirmed the district court’s judgment. *United States v. Quintana*, 763 F. App’x 422 (6th Cir. 2019).

In 2020, Quintana filed a § 2255 motion, claiming that his trial counsel rendered ineffective assistance by (1) failing to negotiate a plea agreement in which Quintana could plead guilty to his true offense of attempting to swindle a confidential informant, (2) tricking Quintana into stipulating to the quantity and purity of the methamphetamine that was seized and to the circumstances surrounding the seizure, and (3) failing to present witnesses who would have testified that Quintana was not a significant drug dealer and that Quintana’s co-defendant admitted to falsely implicating Quintana. The district court denied Quintana’s § 2255 motion on the merits and declined to issue a certificate of appealability.

To obtain a certificate of appealability, a movant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Where a district court has rejected a constitutional claim on the merits, a movant must show that jurists of reason would find the district court’s assessment of the claim to be debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Quintana first argues that his trial counsel rendered ineffective assistance by failing to negotiate a plea agreement in which Quintana could plead guilty to his true offense of attempting to swindle a confidential informant. To prevail on an ineffective-assistance-of-trial-counsel claim, a movant must establish that trial counsel’s performance was deficient and that the deficiency prejudiced the defense, meaning that there is a reasonable probability that, but for counsel’s error, the result of the proceeding would have been different. *Shimel v. Warren*, 838 F.3d 685, 696 (6th Cir. 2016).

Reasonable jurists would not debate the district court’s rejection of this claim. In an affidavit, Quintana’s trial counsel stated that he discussed with Quintana the plea agreement that the government offered him, which would have required Quintana to plead guilty to the conspiracy charge in exchange for the government dismissing the distribution charge, and that the government was not willing to negotiate a different agreement. In its response to Quintana’s § 2255 motion, the government confirmed that it did not offer Quintana, and would not have accepted, a plea agreement that would allow him to plead guilty to only attempting to swindle a confidential informant. Thus, Quintana has not shown that counsel performed deficiently because he has not established that it was possible for counsel to negotiate his desired plea agreement.

Quintana next argues that his trial counsel rendered ineffective assistance by tricking him into stipulating to the findings in a lab report concerning the quantity and purity of the methamphetamine that was seized and to the circumstances surrounding the seizure. Quintana presented no evidence that undermined the stipulated facts concerning the quantity and purity of the methamphetamine that was seized. Nor did he identify any specific error in the stipulated facts concerning the circumstances surrounding the seizure. Thus, reasonable jurists would not debate

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the district court's rejection of this claim because Quintana failed to establish prejudice resulting from counsel's alleged error.

Finally, Quintana argues that his trial counsel rendered ineffective assistance by failing to present certain witnesses. Quintana specifically contends that counsel should have presented (1) a prisoner who was housed with Quintana's co-defendant, George Humrich, and would have testified that Humrich admitted to falsely implicating Quintana and (2) two of his friends, who would have testified that Quintana "wasn't a big drug dealer" and offered other character evidence.

Reasonable jurists would not debate the district court's rejection of this claim. At trial, the prosecution presented considerable evidence that Quintana facilitated the sale of two pounds of methamphetamine between Humrich and an informant, including testimony from Humrich and the informant and recorded phone calls and text messages implicating Quintana. Given that evidence, it is unlikely that the jury would have found credible testimony that Quintana was falsely implicated in the crimes, and it is unlikely that the jury's verdict would have been affected by the testimony of Quintana's friends concerning his general character and whether they believed him to be a significant drug dealer. Thus, Quintana failed to establish prejudice resulting from counsel's alleged errors.

Accordingly, Quintana's motion for a certificate of appealability is **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

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Filed: June 17, 2022

Mr. Mike Moreno Quintana
U.S.P. Leavenworth
P.O. Box 1000
Leavenworth, KS 66048

Re: Case No. 21-1837, *Mike Quintana v. USA*
Originating Case No. 1:20-cv-00273: 1:16-cr-00235-2

Dear Mr. Quintana,

The Court issued the enclosed Order today in this case. Judgment to follow.

Sincerely,

s/Gretchen S. Abruzzo, Case Manager for
C. Anthony Milton, Case Manager
Direct Dial No. 513-564-7026

cc: Mr. Stephen Paul Baker
Mr. Thomas Dorwin

Enclosure

No mandate to issue