

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

February 7, 2007

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

AMADO GARCIA,

Defendant–Appellant.

No. 06-8052

(D.C. No. 04-CV-295-WFD)

(D. Wyo.)

ORDER*

Before **KELLY, McKAY**, and **LUCERO**, Circuit Judges.

In this *pro se* 28 U.S.C. § 2255 prisoner appeal, Petitioner challenges his conviction by a jury on three drug charges. His conviction was affirmed on direct appeal by a panel of this court in *United States v. Garcia*, 71 Fed. App'x 781 (10th Cir. 2003) (unpublished). In his § 2255 petition, he raised several claims of ineffective assistance of counsel relating to his trial and appeal. The district court determined that Petitioner was not entitled to relief on any of his claims, and it denied his § 2255 petition and his request for a certificate of appealability. The trial court's thorough Order, filed June 6, 2006, fully and correctly sets forth why

* This order is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

it dismissed the petition. We see no reason to repeat that effort.¹

To obtain a certificate of appealability, Petitioner must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In order to meet this burden, Petitioner must demonstrate “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation omitted).

We have carefully reviewed Petitioner’s brief, the district court’s disposition, and the record on appeal. Nothing in the facts, the record on appeal, or Petitioner’s filing raises an issue which meets our standard for the grant of a certificate of appealability. For substantially the reasons set forth by the district court, we **DENY** Petitioner’s request for a certificate of appealability and **DISMISS** the appeal. We do, however, **GRANT** Petitioner’s motion for leave to proceed on appeal *in forma pauperis*.

Entered for the Court

Monroe G. McKay
Circuit Judge

¹ Petitioner requested that we hold our decision in abeyance pending the Supreme Court’s decision in *Burton v. Stewart*, 127 S. Ct. 793 (2007). The Supreme Court subsequently ordered the habeas petition in that case dismissed for lack of jurisdiction. *Id.* Accordingly, that decision has no impact on the instant petition.