

UNITED STATES COURT OF APPEALS **October 16, 2008**

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

UNRICO RANIER MINNERS,

Defendant - Appellant.

No. 08-5092
(N.D. Oklahoma)
(D.C. Nos. 4:08-CV-00317-JHP-SAJ
and 4:05-CR-00152-JHP-2)

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

Before **BRISCOE, MURPHY, and HARTZ**, Circuit Judges.

Unrico Minners, a federal prisoner, seeks a certificate of appealability (“COA”) so he can appeal the district court’s denial of the motion to vacate, set aside, or correct sentence he brought pursuant to 28 U.S.C. § 2255. *See* 28 U.S.C. § 2253(c)(1)(B) (providing a movant may not appeal the denial of a § 2255 motion unless the movant first obtains a COA). Minners pleaded guilty to four charges stemming from a crime of violence committed in 2005. *See United States v. Minners*, 211 Fed. App’x 742, at *1 (10th Cir. 2007). Minners’s direct appeal was dismissed by this court on January 4, 2007. *Id.* The instant § 2255 motion was filed on May 27, 2008. In the motion, Minners asserted claims that his counsel provided constitutionally ineffective assistance. The district court

dismissed Minners's § 2255 motion sua sponte, concluding the motion was filed outside the one-year limitation period set forth in 28 U.S.C. § 2255.

In his appellate brief, Minners argues the merits of the claims he seeks to raise in his § 2255 motion. He does not address the district court's procedural ruling and presents no argument that the district court miscalculated the one-year period.

To be entitled to a COA, Minners must show "that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 474, 484-85 (2000) (holding that when a district court dismisses a habeas petition on procedural grounds, a petitioner is entitled to a COA only if he shows both that reasonable jurists would find it debatable whether he had stated a valid constitutional claim and debatable whether the district court's procedural ruling was correct). Our review of the record demonstrates that the district court's dismissal of Minners's § 2255 motion as untimely is not deserving of further proceedings or subject to a different resolution on appeal. Accordingly, we **deny** Minners's request for a COA and **dismiss** this appeal.

ENTERED FOR THE COURT



Elisabeth A. Shumaker, Clerk