

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

December 18, 2008

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ARMANDO BARAJAS-GARCIA,

Defendant-Appellant.

No. 08-1261
(D.C. Nos. 06-CR-143-LTB and
1:07-CV-02499-LTB)
(D. Colo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **O'BRIEN**, **McKAY**, and **GORSUCH**, Circuit Judges.

Armando Barajas-Garcia pled guilty to unlawful re-entry into the United States and was sentenced to 57 months. Mr. Barajas-Garcia's sentence was upheld by this court in *United States v. Barajas-Garcia*, 2007 WL 1196511 (10th Cir. 2007). Subsequently, Mr. Barajas-Garcia filed the instant collateral challenge to his confinement pursuant to 28 U.S.C. § 2255. In an extensively reasoned opinion, the district court denied relief and Mr. Barajas-Garcia's request for a certificate of appealability ("COA").

* This order is not binding precedent except under the doctrines of law of the case, res judicata and collateral estoppel.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.

Mr. Barajas-Garcia now seeks a COA from us to enable him to appeal the district court's denial of his § 2255 motion. In order to secure a COA, a petitioner must make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), such that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003). In assessing this question, we review Mr. Barajas-Garcia's *pro se* filings with special solicitude. *See Van Deelen v. Johnson*, 497 F.3d 1151, 1153 n.1 (10th Cir. 2007). Even when viewed through this lens, however, to the extent that Mr. Barajas-Garcia seeks to challenge the district court's disposition of his § 2255 motion, we conclude based on our review of the record, and for substantially the same reasons given by the district court in its thoughtful opinion, that no reasonable jurist could debate the correctness of that court's rulings. To the extent Mr. Barajas-Garcia seeks to raise new issues on appeal that were not presented to the district court, we decline to consider them. *See Dockins v. Hines*, 374 F.3d 935, 940 (10th Cir. 2004) (court of appeals may decline to consider novel argument in application for COA not presented first to the district court). Mr. Barajas-Garcia's request for COA is therefore denied and this appeal is dismissed.

ENTERED FOR THE COURT

Neil M. Gorsuch
Circuit Judge