

April 26, 2010

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS ADOLFO
TINAJERO-PORRAS,

Defendant - Appellant.

No. 09-6292
(D.C. Nos. 09-CV-00473-R and
06-CR-00115-R-1)
(W.D. Okla.)

**ORDER
DENYING CERTIFICATE OF APPEALABILITY**

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

Defendant-Appellant Jesus Tinajero-Porras, a federal inmate appearing *pro se*, seeks to appeal from the district court’s denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. Because Mr. Tinajero-Porras has not made “a substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), we deny his request for a certificate of appealability (“COA”) and dismiss the appeal. Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).

A jury convicted Mr. Tinajero-Porras on drug charges arising out of a conspiracy to possess with intent to distribute five kilograms or more of cocaine and 1,000 kilograms or more of marijuana and he was sentenced to 30 years’

imprisonment. United States v. Tinajero-Porras, 275 F. App'x. 794, 795 (10th Cir. 2008). In his § 2255 motion, he primarily argued that he received ineffective assistance of counsel. On appeal, he argues that counsel was ineffective based on failing to object, argue, and preserve the following points: (1) the four-point enhancement for being a leader/organizer lacks a factual basis, (2) the drug quantities used were in error, (3) there was no evidence he laundered money, (4) the two-point enhancement for a firearm was not supported by the evidence, and (5) cumulative error. He also objects to the district court's practice of striking his reply brief because it was not timely filed within 11 days. 1 R. 230.

To obtain a COA, Mr. Tinajero-Porras must show "that jurists 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 v. Cockrell, 537 U.S. 322, 327 (2003). To establish ineffective assistance of counsel, Mr. Tinajero-Porras was required to prove deficient performance and prejudice. Strickland v. Washington, 466 U.S. 668, 687 (1984). Having reviewed the pleadings including the government's responses and the Pre-Sentence Report, 1 R. 94-156, 181-204, and the district court's resolution of Mr. Tinajero-Porras' claims, we are satisfied that he cannot meet this standard. 1 R. 165-71, 207-09, 230 (noting that the result would not be altered even had the court considered the reply brief).

We deny a COA and DISMISS the appeal.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge