**FILED**
**United States Court of Appeals**
**Tenth Circuit**

**April 23, 2009**

**Elisabeth A. Shumaker**
**Clerk of Court**

**UNITED STATES COURT OF APPEALS**

**TENTH CIRCUIT**

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| UNITED STATES OF AMERICA,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>MORGAN EARL WINDRIX,<br><br>Defendant-Appellant. | No. 09-5006<br>(D.C. No. 4:08-CV-00238-CVE-PJC<br>and No. 4:02-CR-00120-CVE-1)<br>(N.D. Okla.) |

**ORDER DENYING CERTIFICATE OF APPEALABILITY**[*]

Before **TACHA**, **TYMKOVICH**, and **GORSUCH**, Circuit Judges.

Morgan Earl Windrix was convicted in federal court of a host of drug and firearm charges and was sentenced to life imprisonment. On direct appeal, we affirmed his conviction but remanded for resentencing in light of *United States v. Booker*, 543 U.S. 220 (2005). *United States v. Windrix*, 405 F.3d 1146, 1157-58 (10th Cir. 2005). The district court resentenced him to 360 months' imprisonment, a sentence we upheld on appeal. *United States v. Westcott*, 2007 WL 196564 (10th Cir. 2007). Mr. Windrix then filed the instant collateral

[*] This order is not binding precedent except under the doctrines of law of the case, res judicata and collateral estoppel.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

challenge to his confinement pursuant to 28 U.S.C. § 2255, raising two claims for relief. In a thorough opinion, the district court denied his petition and his subsequent request for a certificate of appealability ("COA").

Mr. Windrix now seeks a COA from this court to permit an appeal of the district court's denial of his § 2255 petition. A COA will not issue unless the applicant makes a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), such 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) (internal quotation marks omitted).

Mindful of the solicitous construction to be afforded Mr. Windrix's *pro se* filings, *Van Deelen v. Johnson*, 497 F.3d 1151, 1153 n. 1 (10th Cir. 2007), we nonetheless conclude that no reasonable jurist could doubt the correctness of the district court's disposition. As such, and for substantially the same reasons given by the district court, we deny Mr. Windrix's application for a COA and dismiss this appeal.

ENTERED FOR THE COURT

Neil M. Gorsuch
Circuit Judge