

UNITED STATES COURT OF APPEALS **September 5, 2013**
TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERTO CARDOZA-SARABIA,

Defendant - Appellant.

No. 13-8049

(D. Wyoming)

(D.C. Nos. 2:12-CV-00230-ABJ and
2:09-CR-00136-ABJ-1)

ORDER DENYING CERTIFICATE OF APPEALABILITY

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

Movant Roberto Cardoza-Sarabia seeks a certificate of appealability (COA) to appeal the denial by the United States District Court for the District of Wyoming of his motion under 28 U.S.C. § 2255 to set aside his sentence and conviction because of ineffective assistance of counsel with respect to his guilty plea. *See* 28 U.S.C. § 2253(c)(1)(B) (requiring COA to appeal denial of § 2255 motion). The district court denied the motion because it was untimely under 28 U.S.C. § 2255(f).

The district court was clearly correct. The judgment was entered against Movant on December 17, 2009. He did not appeal. He filed his § 2255 motion on October 12, 2012. In district court he gave no reason to overcome the

statutory bar, nor has he done so in this court. We DENY a COA and dismiss the appeal. Appellant's motion to proceed in forma pauperis is DENIED.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge