

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

June 6, 2022

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL BENITEZ-LOPEZ, also
known as Mikey, also known as
Money Mike,

Defendant - Appellant.

No. 22-1045
(D.C. Nos. 1:21-CV-00477-PAB
& 1:18-CR-00328-PAB-6)
(D. Colo.)

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

Before **PHILLIPS**, **MURPHY**, and **EID**, Circuit Judges.

This matter is before the court on Michael Benitez-Lopez’s pro se request¹ for a certificate of appealability (“COA”). He seeks a COA so he can appeal the denial of his 28 U.S.C. § 2255 motion. *See* 28 U.S.C. § 2253(c)(1)(B) (providing no appeal is allowed from a “final order in a proceeding under section 2255” unless the movant first obtains a COA). Because he has not “made a substantial

¹The court construes Benitez-Lopez’s filings liberally because he is not represented by counsel. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). This court will not, however, act as a pro se litigant’s advocate. *Hall*, 935 F.2d at 1110.

showing of the denial of a constitutional right,” *id.* § 2253(c)(2), this court **denies** his request for a COA and **dismisses** this appeal.

Following a jury trial, Benitez-Lopez was convicted of multiple drug crimes. *See* 18 U.S.C. §§ 841, 843, 846. The district court sentenced him to 180 months’ imprisonment on count one (the conspiracy count), 48 months’ imprisonment on count eight (the use-of-a-communication-facility-in-connection-with-a-drug-trafficking-offense count), and 180 months’ imprisonment on count 10 (the possession-of-cocaine count). The district court ordered that all three sentences run concurrently. Benitez-Lopez appealed and this court affirmed.

United States v. Benitez-Lopez, 834 F. App’x 463, 466 (10th Cir. 2020).

Thereafter, Benitez-Lopez filed the instant, timely § 2255 motion, raising substantive and ineffective-assistance-based challenges to his convictions.

In a comprehensive and well-stated order, the district court denied Benitez-Lopez’s request for collateral relief. The district court concluded Benitez-Lopez’s due process and double jeopardy challenges were procedurally barred because they were not raised on direct appeal. Nevertheless, the district court considered the merits of these claims under the rubric of ineffective assistance of trial and appellate counsel. The district court concluded Benitez-Lopez’s ineffective-assistance-of-counsel claims failed because the objections he asserted

counsel should have raised at trial or on appeal were without merit. *See Strickland v. Washington*, 466 U.S. 668, 678-88 (1984).

Benitez-Lopez seeks a COA so he can appeal the district court's denial of his § 2255 motion. The granting of a COA is a jurisdictional prerequisite to an appeal from the denial of a § 2255 motion. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). To be entitled to a COA, Benitez-Lopez must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make the requisite showing, he must demonstrate "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." *Miller-El*, 537 U.S. at 336 (quotations omitted). In evaluating whether he has satisfied this burden, we undertake "a preliminary, though not definitive, consideration of the [legal] framework" applicable to each of his claims. *Id.* at 338. Although he need not demonstrate his appeal will succeed to be entitled to a COA, he must "prove something more than the absence of frivolity or the existence of mere good faith." *Id.* (quotations omitted).

Having undertaken a review of Benitez-Lopez's combined appellate brief and request for COA, the district court's order, and the entire record before this court pursuant to the framework set out by the Supreme Court in *Miller-El*, we

conclude Benitez-Lopez is not entitled to a COA. In so concluding, this court has nothing to add to the district court's cogent, thorough order denying his § 2255 motion. Accordingly Benitez-Lopez's request for a COA is **DENIED** and this appeal is **DISMISSED**.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge