

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN JACOBSON,

Defendant.

ORDER

05-CR-0117-C-01
06-C-0751-C

Defendant Brian Jacobson has filed a notice of appeal, paid his filing fee and asked for a certificate of appealability, which he needs if he is to appeal the denial of his motion for postconviction relief brought pursuant to 28 U.S.C. § 2255. See 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Such a certificate shall issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” § 2253(c)(2).

Before issuing a certificate of appealability, a district court must find that the issues the applicant wishes to raise are ones that “are debatable among jurists of reason; that a court *could* resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.” Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983).

Defendant contends that trial counsel gave him ineffective assistance by (1) failing to conduct any investigation of the facts; (2) failing to seek fingerprint or DNA testing of the firearm that defendant was charged with possessing; (3) failing to object to the government's and the court's characterization of the offense as discharging a firearm from a vehicle within the city limits as well as their reference to other shooting incidents in the city; (4) failing to object to the prosecutor's and court's discussions of the possibility of a mandatory minimum sentence of fifteen years if 18 U.S.C. § 924(e) applied; and (5) giving defendant the erroneous information that he faced a potential sentence of fifteen years in prison, which compelled him to enter his plea. In deciding the motion, I found that petitioner had failed to support his allegations about his counsel's deficiencies. Although I believe that defendant failed to show his entitlement to relief under § 2255 because of his counsel's alleged constitutional deficiencies, I cannot say that a reasonable judge would not make a different decision. Therefore, I will issue a certificate of appealability.

ORDER

IT IS ORDERED that defendant Brian Jacobson's request for a certificate of appealability is GRANTED.

Entered this 11th day of May, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge

