

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MONCLAIR HENDERSON-EL,

Defendant.

ORDER

08-cv-219-bbc

04-cr-162-jcs

Defendant Monclair Henderson-El has filed an application for a certificate of appealability from the judgment entered in this case on May 13, 2008.

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).

In his § 2255 motion, defendant raised four challenges to his conviction, all of which

could have been raised on direct appeal. Issues not raised on direct appeal are barred from collateral review absent a showing of good cause for failure to raise them and actual prejudice from the failure to raise them. Defendant did not make such a showing. The law is clear on the subject of rearguing issues raised on direct appeal. Accordingly, the issues defendant seeks to raise on appeal are not debatable among reasonable jurists; no court would resolve the issues differently; and the questions are not adequate to deserve encouragement to proceed further. Therefore, I decline to issue a certificate of appealability.

ORDER

IT IS ORDERED that defendant Monclair Henderson-El's request for a certificate of appealability is DENIED.

Entered this 9th day of June, 2008.

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