

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

BERNARDO GARCIA,

Defendant.  
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ORDER

12-cv-566-bbc  
05-cr-155-bbc

In an order entered on September 24, 2012, I denied defendant Bernardo Garcia's motion for post conviction relief under 28 U.S.C. § 2255. In doing so, I neglected to address the issuance of a certificate of appealability under the newly effective amendments to Rule 11 of the Rules Governing Section 2255 Cases in the United States District Courts. Defendant has now filed a motion for reconsideration and request for a certificate of appealability of the September 24, 2012 order.

As to defendant's motion for reconsideration, nothing in it convinces me that it was a mistake to deny his § 2255 motion or that the judgment should be vacated to give defendant an opportunity to re-argue his motion.

Next, addressing defendant's request for a certificate of appealability, such a certificate shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make this showing, a defendant must "sho[w] 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) (quoting Barefoot v. Estelle, 463 U.S. 880, 893, n.4 (1983)).

Although Rule 11 allows the court to direct the parties to submit arguments on the question of issuing a certificate of appealability, it is unnecessary to do so in this instance. No reasonable jurist would believe that defendant's motion has any merit. As I explained in the September 24, 2012, the Supreme Court's holding in United States v. Jones, 132 S. Ct. 945 (2012) has no retroactive effect on defendant's 2006 conviction because the officers who installed the GPS were acting legally at the time.

#### ORDER

IT IS ORDERED that defendant's motion for reconsideration and request for a certificate of appealability are DENIED.

Entered this 8th day of October, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge