

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL ACTION NO. 98-10176-GAO

UNITED STATES,

v.

JEFFREY NORTH,
Defendant.

ORDER DENYING CERTIFICATE OF APPEALABILITY

October 9, 2009

O'TOOLE, D.J.

On July 24, 2009, Jeffrey North's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 was denied. United States v. North, No. 98-10176-GAO (D. Mass. July 24, 2009) (Opinion and Order) (dkt. no. 239). He now seeks a certificate of appealability on Grounds I, II, VI, and VII presented in his petition.

Ground I. North argues that this Court erred in finding Ground I to be procedurally defaulted. Even if that is true, North has failed to show that reasonable jurists "would find it debatable whether the petition states a valid claim of the denial of a constitutional right." See Slack v. McDaniel, 529 U.S. 473, 484 (2000) (holding that a petitioner must show a debatable procedural ruling *and* viable claim for the denial of a constitutional right). Conclusory allegations, without any factual support, that the Court lacked jurisdiction because the indictment was issued after the expiration of the grand jury term do not amount to a viable claim.

Ground II. North contends that this Court erred in finding that Ground II could not be relitigated in a § 2255 motion because it had been raised and rejected on direct appeal. Although North correctly points out that this principle does not apply when "countervailing equitable

considerations,” such as actual innocence, are present, see Withrow v. Williams, 507 U.S. 680, 721 (1993), his § 2255 petition did not present an actual innocence claim. There is also no evidence that he was denied a full and fair hearing on direct appeal. Therefore, North has failed to show that reasonable jurists “would find it debatable whether [this Court] was correct in its procedural ruling.” See Slack, 529 U.S. at 484.

Ground VI. North seeks to wholly rewrite his ineffective assistance of counsel claim arguing that it “was mangled as a result of the actions of the prison guards at USP McCreary.” (Pet’r Application for Certificate of Appealability 24.) A certificate of appealability cannot issue on a claim not presented to the district court. See McCambridge v. Hall, 303 F.3d 24, 54 (1st Cir. 2002).

Ground VII. North has failed to make a “substantial showing of the denial of a constitutional right” as required by 28 U.S.C. § 2253(c)(2) because he merely rearticulates the arguments advanced in support of the petition itself. For the reasons set forth in the previous Opinion and Order, those arguments lack merit.

Accordingly, North’s Application for Certificate of Appealability (dkt. no. 241) is DENIED.

It is SO ORDERED.

/s/ George A. O’Toole, Jr.
United States District Judge