

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
 : NO. 08cr369
 vs. :
 : CIVIL ACTION
 DARRYL BUCK : NUMBER 11cv7569

MEMORANDUM

YOHN, J.

MAY 23, 2012

Defendant, Darryl Buck (“Buck”) filed a pro se motion to vacate, set aside or correct his sentence under 28 U.S.C. § 2255. The government filed a motion to dismiss to which Buck filed a response. As set forth in my memorandum of May 8, 2012, Buck’s guilty plea agreement contained an appellate waiver provision. Because he entered into the guilty plea agreement knowingly and voluntarily, he waived his right to bring the claims in the motion. Moreover, he made no sufficient allegations of a miscarriage of justice to override the waiver. As a result, I granted the government’s motion to dismiss and dismissed the motion to vacate, set aside or correct sentence. Defendant has appealed.

I now must determine whether I should issue a certificate of appealability. A habeas petitioner may not appeal the dismissal of his petition unless he receives a certificate of appealability from the district court or the circuit court. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A court may issue a certificate of appealability only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). As more fully set forth in my memorandum of May 8, 2012 I have found that Buck made his waiver of appellate rights knowingly and voluntarily and that the enforcement of the waiver would not cause a miscarriage of justice. I am persuaded that

reasonable jurists would not find this assessment debatable or wrong. Because Buck has failed to make a substantial showing of the denial of a constitutional right, I will not issue a certificate of appealability.

An appropriate order accompanies this memorandum.

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O R D E R

AND NOW, this 23rd day of May, 2012, pursuant to the court's memorandum and order dated May 8, 2012, **IT IS HEREBY ORDERED** that Darryl Buck has failed to make a substantial showing of the denial of a constitutional right, there is no ground to issue a certificate of appealability and the court will not issue a certificate of appealability.

s/William H. Yohn Jr.
William H. Yohn Jr., Judge