

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,)
v.)
Plaintiff,)
Case Nos. 10-20009-01-CM (Criminal)
14-2380-CM (Civil)
MARLO TOOMBS,)
Defendant.)

MEMORANDUM AND ORDER

This case is before the court on defendant Marlo Toombs's Motion Seeking Reconsideration of Post-Conviction Judgment (Doc. 151). Defendant is essentially asking the court to reconsider its denials of defendant's prior § 2255 motion and subsequent motion to alter or amend judgment.

The court construes defendant’s motion to reconsider as an unauthorized successive § 2255 motion. This court does not have jurisdiction to consider a successive § 2255 motion unless it has been certified “by a panel of the appropriate court of appeals.” *See* 28 U.S.C. § 2255(h). And defendant cites no authority permitting him to file a motion to reconsider the court’s denial of his first reconsideration motion. Defendant’s motion to reconsider is dismissed.

Because defendant is not entitled to relief, the court denies his request for an evidentiary hearing. An evidentiary hearing is generally not required when “the motion and files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b).

Rule 11 of the Rules Governing Section 2255 Proceedings directs the court to issue or deny a certificate of appealability when it issues a final adverse order. A certificate of appealability is not

warranted in this case because reasonable jurists could not debate whether the motion “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) (internal citation omitted).

IT IS THEREFORE ORDERED that defendant Marlo Toombs’s Motion Seeking Reconsideration of Post-Conviction Judgment (Doc. 151) is dismissed.

IT IS FURTHER ORDERED that defendant’s request for an evidentiary hearing is denied.

IT IS FURTHER ORDERED that the court will not issue a certificate of appealability.

Dated this 11th day of May 2017, at Kansas City, Kansas.

s/ Carlos Murgua
CARLOS MURGUIA
United States District Judge