IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, vs. DIONTE DORTCH, Defendant.	**8:15CR343** **ORDER**

This matter is before the Court after a transfer from the Eighth Circuit Court of Appeals, Filing No. 833, on the defendant's application for a certificate of appealability, Filing No. 840.[1]

This Court denied the defendant's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence, entered a judgment of dismissal, and denied the defendant's motion to reconsider. Filing Nos. 825, 825, and 829. In his application for a certificate of appealability, the defendant reasserts the arguments he presented in his § 2255 petition. He again argues that counsel was ineffective and that there was no factual basis for his guilty plea on the RICO charge.

The defendant's right to appeal is governed by the certificate of appealability requirements set out in 28 U.S.C. § 2253(c)). *Slack v. McDaniel*, 529 U.S. 473, 477 (2000). Under section 2253(c), the district court will issue a certificate of appealability

[1] Dortch initially filed his application for certificate of appealability in the Court of Appeals. Filing No. 833-1. The Court of Appeals docketed the pleading as an application for a successive motion to vacate under 28 U.S.C. § . 2255, administratively closed the appeal, and transferred the filings to this Court for its consideration. Filing No. 833.

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only if the applicant has made a substantial showing of the denial of a constitutional right. *Id.* A "substantial showing of the denial of a constitutional right" requires that petitioner demonstrate "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." *Id.* at 483-84. "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.*

The Court finds the defendant has not shown that reasonable jurists would find the Court's denial of his § 2255 motion is debatable or wrong. Accordingly,

IT IS ORDERED:

1. The defendant's application for a certificate of appealability (Filing No. 840) is denied.

2. This action is dismissed.

Dated this 2nd day of October, 2020.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge