

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**March 21, 2006**

**Elisabeth A. Shumaker**  
**Clerk of Court**

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DAVID L. LACH,

Defendant-Appellant.

No. 05-4223

(D.C. Nos. 2:05-CV-202-DAK and  
2:04-CR-194-DAK)

(D. Utah)

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**ORDER**

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Before **KELLY, McKAY, and LUCERO**, Circuit Judges.

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Petitioner, a federal prisoner appearing pro se, seeks habeas relief pursuant to 28 U.S.C. § 2255. Petitioner pleaded guilty to mail fraud and was sentenced to thirty months in prison and thirty-six months of supervised release. In March of 2005, Petitioner filed a § 2255 motion to vacate his sentence, challenging his sentence under *Blakely v. Washington*, 542 U.S. 296 (2004). Petitioner also argued that his counsel was ineffective because he failed to raise the *Blakely* issue even though *Blakely* was decided before sentencing.

The district court denied Petitioner's § 2255 motion and also his Federal Rule of Civil Procedure 60(b) motion for relief from judgment. Order (D. Utah Aug. 5, 2005); Memorandum Decision and Order (D. Utah Apr. 28, 2005). The

district court analyzed Petitioner's *Blakely* challenge under *United States v. Booker*, 543 U.S. 220 (2005). Memorandum Decision and Order, 3. The district court denied Petitioner's challenge because *Booker* does not apply retroactively to cases on collateral review. *Id.*; see also *Bey v. United States*, 399 F.3d 1266, 1269 (10th Cir. 2005).

The issues Petitioner raises in this appeal are identical to those he brought before the district court. To grant a certificate of appealability, Petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (1994). To meet this burden, Petitioner must 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." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation omitted).

We have carefully reviewed Petitioner's brief, the district court's disposition, and the record on appeal. Nothing in the facts, the record on appeal, or Petitioner's filing raises an issue which meets our standard for the grant of a certificate of appealability. For substantially the same reasons set forth by the district court in its orders of April 28, 2005, and August 5, 2005, we cannot say "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner." *Id.*

We **DENY** Petitioner's request for a certificate of appealability and **DISMISS** the appeal.

Entered for the Court

Monroe G. McKay  
Circuit Judge