

United States Court of Appeals For the First Circuit

No. 07-1883

CARL E. OLSEN,

Petitioner - Appellant,

v.

UNITED STATES,

Respondent - Appellee.

ORDER OF COURT

Entered: **August 16, 2007**

Pursuant to 1st Cir. R. 27.0(d)

This court has docketed petitioner's notice of appeal from the district court's order affirming a magistrate judge's recommendation that petitioner's motion for relief from judgment be dismissed. Although the petitioner filed his motion pursuant to 28 U.S.C. § 2241, the district court construed the motion as brought under 28 U.S.C. §2255. Accordingly, a certificate of appealability is required to appeal the district court's ruling. 28 U.S.C. §2253; Greenwalt v. Stewart, 105 F.3d 1268, 1272 (9th Cir. 1997). The district court declined to issue a certificate of appealability on April 23, 2007.

We treat petitioner's notice of appeal as a request for a certificate of appealability from this court. Petitioner-appellant is ordered to file a memorandum, by **August 30, 2007**, setting forth specific facts, reasons, and issues supporting issuance of a certificate. See Local Rule 22.1; see also 28 U.S.C. §2253(c)(2) (in order for a certificate to be granted, applicant must make substantial showing of the denial of a constitutional right). After **August 30, 2007**, whether or not petitioner-appellant has filed a memorandum, the case will be submitted to the court for a determination whether a certificate should issue. If a certificate is denied, the appeal will be terminated.

By the Court:
Richard Cushing Donovan, Clerk

ERIC H. DEININGER

By. _____

Appeals Attorney

[cc: Carl Olsen, Margaret McGaughey, AUSA]