

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-2137

Walter Gonzalez,

Appellant,

v.

United States of America,

Appellee.

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* Appeal from the United States
* District Court for the
* District of South Dakota.
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* [UNPUBLISHED]
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Submitted: November 29, 2005

Filed: December 9, 2005

Before MELLOY, MAGILL, and GRUENDER, Circuit Judges.

PER CURIAM.

Walter Gonzalez filed a 28 U.S.C. § 2255 motion, seeking relief based on United States v. Booker, 125 S. Ct. 738 (2005), and based on two criminal-history issues he did not pursue on direct appeal. The district court¹ denied Gonzalez's motion, but granted a certificate of appealability (COA) on whether the rule announced in Booker applies retroactively to cases on collateral review. We have

¹The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota, adopting the report and recommendations of the Honorable Marshall P. Young, United States Magistrate Judge for the District of South Dakota.

since concluded that it does not. See Never Misses A Shot v. United States, 413 F.3d 781, 783-84 (8th Cir. 2005) (per curiam). Further, Gonzalez has not made a substantial showing that he was denied a constitutional right so as to justify expanding the scope of the COA to include his criminal-history arguments. See 28 U.S.C. § 2253(c); Pruitt v. United States, 233 F.3d 570, 572-73 (8th Cir. 2000) (appellate review of ruling on § 2255 motion is limited to issues specified in COA), cert. denied, 533 U.S. 932 (2001). Accordingly, we affirm. See 8th Cir. R. 47B.
