

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HECTOR LUIS RIOS :
v. : 3:94CR112(AHN)
3:01CV678(AHN)
UNITED STATES OF AMERICA :

ORDER

After a careful review of movant's § 2255 motion, it is DENIED. The Court finds that the movant has waived his claims inasmuch as they constitute substantive claims which could have been raised on direct appeal, but were not raised by the movant. Neither has the movant shown why he failed to raise the claim on appeal nor has he shown any prejudice. See United States v. Frady, 456 U.S. 152, 170 (1982); Rosario v. United States, 164 F.3d 729, 732 (2d Cir. 1998).

Further, movant is procedurally barred from raising the sufficiency of the evidence claim because this claim has already been reviewed by the Court of Appeals and rejected. See United States v. Diaz, 176 F.3d 52, 59-63 (2d Cir. 1999)(rejecting Rios's sufficiency of evidence argument); Riascos-Pradu v. United States, 66 F.3d 30, 33 (2d Cir. 1995)(stating that "section 2255 may not be employed to re-litigate questions which were raised and considered on direct appeal").

As to movant's claim that he was deprived of the effective assistance of counsel, that claim is also rejected. The heavy burden that a movant must establish, that his counsel's performance "fell below an objective standard of reasonableness," has not been met. Strickland v. Washington, 466 U.S. 668, 688 (1984). Even if movant was found to have met the first test, he must show prejudice. Id. at 694. This, he has not done.

For all of the above reasons, the movant's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 is denied.

SO ORDERED this 17th day of May, 2002 at Bridgeport, Connecticut.

Alan H. Nevas
United States District Judge