

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

KEROME LENDON PAISLEY,

Petitioner,

-vs-

Case No. 2:07-cv-370-FtM-29DNF

Case No. 2:03-cr-74-FTM-29DNF

UNITED STATES OF AMERICA,

Respondent.

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**OPINION AND ORDER**

This matter comes before the Court on Petitioner's Notice of Appeal (Doc. #18) filed on June 23, 2009. Pursuant to FED. R. APP. P. 22(b)(1), this is deemed to also include an application for certificate of appealability (Doc. #19).

Under 28 U.S.C. § 2253(c)(1), an appeal cannot be taken from a final order in a habeas proceeding unless a certificate of appealability issues. The decision to issue a certificate of appealability requires "an overview of the claims in the habeas petition and a general assessment of their merits." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Specifically, where a district court has rejected a prisoner's constitutional claims on the merits, the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional

claims debatable or wrong. See Slack v. McDaniel, 529 U.S. 473, 484 (2000); Peoples v. Haley, 227 F.3d 1342 (11th Cir. 2000). When the district court has rejected a claim on procedural grounds, the petitioner must show that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Slack, 529 U.S. at 484; Franklin v. Hightower, 215 F.3d 1196, 1199 (11th Cir. 2000) (per curiam), cert. denied, 121 S. Ct. 1738 (2001). "This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims." Miller-El v. Cockrell, 537 U.S. at 336.


On May 28, 2009, the Court entered an Order (Doc. #17) denying petitioner's Motion for Relief From Order Denying Motion for Certificate of Appealability and Motion for Leave to Appeal In Forma Pauperis, Pursuant to Rule 60(B)(1) of the Federal Rules of Civil Procedure since the appeal was dismissed for lack of jurisdiction based on the untimeliness of the appeal and therefore reconsideration was denied. To the extent that a certificate of appealability is required for an appeal from the May 28, 2009 Order, the Court finds that petitioner has failed to demonstrate that a certificate would be appropriate. The motion will be denied.

Accordingly, it is now

**ORDERED:**

Petitioner's application for certificate of appealability (Doc. #19), deemed included in the Notice of Appeal (Doc. #19), is **DENIED.**

**DONE AND ORDERED** at Fort Myers, Florida, this 24th day of June, 2009.

  
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**JOHN E. STEELE**  
United States District Judge

Copies:  
All Parties of Record

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