

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

AARON DESHON SPEARS,

Plaintiff,

-vs-

Case No. 2:07-cv-648-FtM-29SPC

Case No. 2:03-cr-134-FTM-29SPC

UNITED STATES OF AMERICA,

Defendant.

OPINION AND ORDER

This matter comes before the Court on Petitioner's Application for Certificate of Appealability (Doc. #52) filed on January 29, 2009 in conjunction with his Notice of Appeal (Doc. #53) from the December 24, 2008 Opinion and Order (Doc. #48) and December 30, 2009 Judgment (Doc. #49).

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 December 24, 2008, the Court entered an Opinion and Order (Doc. #48) denying petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by Person in Federal Custody (Doc. #1) as to all claims for the reasons stated therein. Judgment (Doc. #49) was entered on December 30, 2008. Upon review, the Court finds that petitioner has failed to show that jurists of reason would find the Court's assessment of the constitutional claim debatable or wrong or that the Court was incorrect in its procedural rulings.

Accordingly, it is now

ORDERED:

Petitioner's Application for Certificate of Appealability
(Doc. #52) is **DENIED**.

DONE AND ORDERED at Fort Myers, Florida, this 3rd day of
February, 2009.



JOHN E. STEELE
United States District Judge

Copies:
All Parties of Record

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303