

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SHEDRICK DEVON DIGGS,

Petitioner,

-vs-

Case No. 2:08-cv-638-FtM-29SPC
Case No. 2:06-cr-89-FTM-29SPC

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

This matter comes before the Court on Petitioner's Request for Certificate of Appealability (Doc. #13) filed in conjunction with the Notice of Appeal (Doc. #12) filed on April 2, 2009, from the Court's Opinion and Order (Doc. #10) and Judgment (Doc. #11).

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 February 23, 2009, the Court issued an Opinion and Order (Doc. #10) dismissing Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, and to Correct, Sentence By a Person in Federal Custody as to the claims of an unlawful sentence and ineffective assistance of counsel in connection with the sentence, and otherwise denying all other claims. Judgment (Doc. #11) was entered on February 24, 2009. 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 Request for Certificate of Appealability (Doc. #13) is **DENIED**.

DONE AND ORDERED at Fort Myers, Florida, this 13th day of April, 2009.



JOHN E. STEELE
United States District Judge

Copies:
All Parties of Record

United States Court of Appeals
Eleventh Circuit
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