

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOLANDA BALLINGER,

Petitioner,

v.

Civil No. 2:06-CV-13520
HONORABLE ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

MILLICENT WARREN,

Respondent,

_____/

**OPINION AND ORDER DENYING THE MOTION FOR RECONSIDERATION AND
DIRECTING THE CLERK OF THE COURT TO TRANSFER THE MOTION FOR A
CERTIFICATE OF APPEALABILITY TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT**

Petitioner filed a petition for writ of habeas corpus, in which she challenged her conviction for assault with intent to rob while armed, kidnaping, malicious threats to extort money, and assault with intent to do great bodily harm less than murder. On April 23, 2012, this Court denied the petition for writ of habeas corpus, declined to issue a certificate of appealability, but granted petitioner leave to appeal *in forma pauperis*. *Ballinger v. Warren*, U.S.D.C. No. 2:06-CV-13520; 2012 WL 1397413 (E.D. Mich. April 23, 2012).

Petitioner has now filed a notice of appeal with the United States Court of Appeals for the Sixth Circuit. Petitioner has also filed a motion for a certificate of appealability, which this Court will treat in part as a motion for reconsideration of the Court's prior decision to deny petitioner a certificate of appealability. For the reasons that follow, the Court will deny petitioner's motion for reconsideration. The Court will further order that petitioner's motion for a certificate of appealability be transferred to the United States Court of Appeals for the Sixth Circuit.

Because this Court previously denied petitioner a certificate of appealability when it denied the petition for writ of habeas corpus, the Court will initially construe petitioner's motion for a certificate of appealability as a motion for reconsideration of the Court's prior order to deny a certificate of appealability in this case. See *e.g. Jackson v. Crosby*, 437 F. 3d 1290, 1294, n. 5 (11th Cir. 2006).

U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (h) allows a party to file a motion for reconsideration. A motion for reconsideration should be granted if the movant demonstrates a palpable defect by which the court and the parties have been misled and that a different disposition of the case must result from a correction thereof. *Ward v. Wolfenbarger*, 340 F. Supp. 2d 773, 774 (E.D. Mich. 2004)(citing L.R. 7.1(g)(3)). A motion for reconsideration which merely presents "the same issues ruled upon by the Court, either expressly or by reasonable implication," shall be denied. *Id.*

In her motion for a certificate of appealability, petitioner advances the same arguments that she made in her initial petition for writ of habeas corpus and which were considered and addressed by this Court when the Court denied petitioner habeas relief and declined to grant her a certificate of appealability. Petitioner's request for reconsideration will therefore be denied, because petitioner is merely presenting issues which were already ruled upon by this Court, either expressly or by reasonable implication, when the Court denied petitioner's application for writ of habeas corpus and denied her a certificate of appealability. See *Hence v. Smith*, 49 F. Supp. 2d 547, 553 (E.D. Mich. 1999).

This Court further notes that the proper procedure when a district court denies a certificate of appealability is for the petitioner to file a motion for a certificate of appealability before the appellate court in the appeal from the judgment denying the petition for writ of

habeas corpus or the motion to vacate sentence. See *Sims v. U.S.*, 244 F. 3d 509 (6th Cir. 2001)(citing Fed. R.App. P. 22(b)(1)). In light of the fact that this Court has already denied petitioner a certificate of appealability, petitioner should direct her request for a certificate of appealability to the Sixth Circuit. The Court, in the interests of justice, will order that petitioner's motion for a certificate of appealability to be transferred to the United States Court of Appeals for the Sixth Circuit.

ORDER

IT IS HEREBY ORDERED that petitioner's request for reconsideration of the Court's previous denial of a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that the Clerk of the Court transfer petitioner's "Motion for A Certificate of Appealability" [Dkt. # 50] to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

s/Arthur J. Tarnow
HONORABLE ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

Dated: November 29, 2012

CERTIFICATE OF SERVICE

I hereby certify on November 29, 2012 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on November 29, 2012: **Jolanda Ballinger**.

s/Michael E. Lang
Deputy Clerk to
District Judge Arthur J. Tarnow
(313) 234-5182