

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SHYMEL CURRY,

Petitioner,

9:03-cv-1123

v.

W.P.PHILLIPS, Superintendent, Greenhaven Correctional
Facility,

Respondent.

THOMAS J. McAVOY,
Senior United States District Judge

DECISION and ORDER

On July 17, 2007 this Court denied Petitioner's motion for relief pursuant to 28 U.S.C. § 2255. Presently before the Court is Petitioner's request for a Certificate of Appealability ("COA").

Title I, § 102 of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") provides that a "certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c). The Second Circuit stated in Reyes v. Keane, 90 F.3d 676, 680 (2d Cir.1996) that "the substantive standard for the a COA is the same as the standard for the prior [certificate of probable cause]." 90 F.3d at 680. Thus, a petitioner does not have to show he should prevail on the merits in order to obtain a COA. Instead, he must "demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further." Maldonado v. U.S., 960 F.Supp. 23, 26

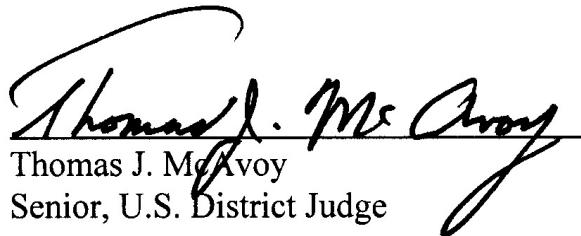
(E.D.N.Y.1997) (quoting Barefoot v. Estelle, 463 U.S. 880, 103 S. Ct. 3383, 3395 n. 4, 77 L.Ed.2d 1090 (1983)).

After reviewing the record, the Court finds that a Certificate of Appealability is not warranted. As discussed in this Court's July 17, 2007 order denying his § 2255 motion, Petitioner's claims are without merit. In the Court's view, reasonable jurists could not disagree with the resolution of Petitioner's claims. Therefore, this Court declines to issue a Certificate of Appealability.

For the reasons set forth above, Petitioner Shymel Curry's application for a Certificate of Appealability is DENIED.

IT IS SO ORDERED.

DATED: April 17, 2009


Thomas J. McAvoy
Senior, U.S. District Judge