

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

KELLY BAKER,

Petitioner,

CASE NO. 2:07-cv-1059
JUDGE SARGUS
MAGISTRATE JUDGE KING

v.

JEFFREY WOLFE, Warden,

Respondent.

OPINION AND ORDER

On December 8, 2008, final judgment was entered dismissing the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254. This matter is before the Court on petitioner's December 29, 2008, notice of appeal, which the Court construes as a request for a certificate of appealability. For the reasons that follow, petitioner's request for a certificate of appealability, Doc. No. 17, is **DENIED**.

In this federal habeas corpus petition, petitioner asserts:

1. Ineffective counsel
2. Sentence is contrary to law.
3. New evidence shows miscarriage of justice.
4. I am innocent.


On December 8, 2008, the Court dismissed all of petitioner's claims as barred by the one-year statute of limitations under 28 U.S.C. §2244(d).

Where the Court dismisses a claim on procedural grounds, a certificate of appealability

should issue when the prisoner shows, at least, 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 v. McDaniel, 529 U.S. 473, 484-85 (2000). Thus, there are two components to determining whether a certificate of appealability should issue when a claim is dismissed on procedural grounds: “one directed at the underlying constitutional claims and one directed at the district court’s procedural holding.” The Court may first “resolve the issue whose answer is more apparent from the record and arguments.” *Id.* Upon review of the record, the Court is unpersuaded that reasonable jurists would debate whether this Court was correct in its dismissal of petitioner’s claims as time-barred. Therefore, petitioner’s request for a certificate of appealability, Doc. No. 17, is **DENIED**.

IT IS SO ORDERED.

 1-22-2009
EDMUND A. SARGUS, JR.
United States District Judge