

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

JAMES L. CHATFIELD,

Petitioner,

v.

CASE NO. 2:11-CV-00911

Judge James L. Graham

Magistrate Judge Elizabeth P. Deavers

**WARDEN, LONDON CORRECTIONAL
INSTITUTION,**

Respondent.

OPINION AND ORDER

On March 13, 2013, final judgment was entered dismissing the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter now is before the Court on Petitioner's April 24, 2013, Notice of Appeal and his request for a certificate of appealability. Doc. Nos. 31, 32. For the reasons that follow, Petitioner's request for a certificate of appealability, Doc. No. 32, is **DENIED**.

In this habeas corpus petition, petitioner asserts he was denied effective assistance of appellate counsel; denied a fair trial and effective assistance of trial counsel when the trial court refused to grant him a continuance and denied his motion to dismiss the charges on speedy trial grounds; denied a fair trial because the prosecution failed to disclose evidence and elicited perjured testimony (claim one); denied a fair trial based on admission of other acts evidence and perjured testimony from police regarding Petitioner's prior bad acts (claim two); denied the right to a speedy trial and denied effective assistance of appellate counsel based on his attorney's failure to raise on appeal a claim of ineffective assistance of trial counsel and denial of the right to a speedy trial (claim three); denied effective assistance of trial counsel because his attorney abandoned the alibi defense, filed the wrong notice of alibi, failed to investigate or call defense

witnesses, and failed to request a jury instruction (claim four). On March 13, 2013, final judgment was entered dismissing all of Petitioner's claims for procedural default, with the exception of his claim that the trial court improperly refused to grant him a continuance, denying him the right to effective assistance of counsel. The Court dismissed this claim on the merits.

Where a claim is denied on the merits, a certificate of appealability may issue only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard is a codification of *Barefoot v. Estelle*, 463 U.S. 880 (1983). *Slack v. McDaniel*, 529 U.S. 473, 484. To make a substantial showing of the denial of a constitutional right, a petitioner must show

that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further." *Barefoot*, 463 U.S. , at 893, and n. 4....

Id.

Where a claim is denied 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 (2000).

Petitioner has failed to establish either that reasonable jurists would debate whether the district court was correct in its dismissal of Petitioner's claims as procedurally defaulted or in its dismissal of Petitioner's claim on the merits. Petitioner's request for a certificate of appealability, Doc. No. 32, is therefore **DENIED**.

IT IS SO ORDERED.

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

Date: May 28, 2013