

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**DAVID SWIFT, SR.
ADC #107092**

PETITIONER

V.

5:06CV00268

**LARRY NORRIS, Director of the
Arkansas Department of Correction**

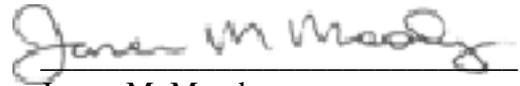
RESPONDENT

ORDER

Pending is Petitioner's Notice of Appeal and Application for Certificate of Appealability. The Court will consider the motion for certificate of appealability under 22(b) of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2253(c). In order for this Court to grant a certificate of appealability, the petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Tiedeman v. Benson*, 122 F.3d 518 (8th Cir. 1997). A "substantial showing" is one in which a petitioner demonstrates that his "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.'" *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)(discussing necessary showing under previous law dealing with certificates of probable cause).

In this case, Petitioner has failed to make such a substantial showing of the denial of a constitutional right. Petitioner has failed to provide the Court with any evidence which was not previously considered in his original petition. Accordingly, for the reasons previously stated in the Proposed Findings and Recommended Disposition and the Order denying Plaintiff's petition, the Motion for Certificate of Appealability (Docket # 15) should be, and hereby is, DENIED.

IT IS SO ORDERED this 9th day of September, 2008.

A handwritten signature in cursive script, reading "James M. Moody". The signature is written in black ink and is positioned above a horizontal line.

James M. Moody
United States District Judge