

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

JAMES S. MCCLELLAN

PLAINTIFF

V.

5:06CV00329 JMM

**LARRY NORRIS, Director, Arkansas
Department of Corrections**

DEFENDANT

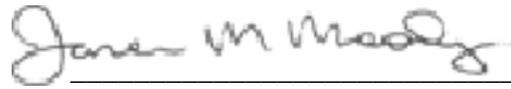
ORDER

Pending is Petitioner's Notice of Appeal which the Court deems an 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 Order denying Plaintiff's petition, the Motion for Certificate of Appealability (Docket # 41) is DENIED.

Plaintiff may file this motion with the Eighth Circuit Court of Appeals.

IT IS SO ORDERED this 17th day of August 2009.

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

James M. Moody
United States District Judge