

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

DETRICK CROSTON

PETITIONER

v.

NO. 5:08CV00227 SWW

LARRY NORRIS, Director of the
Arkansas Department of Correction

RESPONDENT

ORDER

Before this Court is what has been filed by the Clerk's office as petitioner Detrick Croston's motion for a certificate of appealability [doc.#18]. This Court has the authority to issue such a certificate. *See, e.g., Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997); *Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir. 1997). A certificate of appealability certifies that the applicant has made a substantial showing of the denial of a constitutional right, that is, a showing that the issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings. *See, e.g., Carson v. Director of the Iowa Dept. of Correctional Services*, 150 F.3d 973, 975 (8th Cir. 1998). With respect to claims that are procedurally barred, the Eighth Circuit has summarized the factors to consider when determining whether a certificate of appealability should issue when a habeas claim is denied on procedural grounds: "(1) if the claim is clearly procedurally defaulted, the certificate should not be issued; (2) even if the procedural default is not clear, if there is no merit to the substantive constitutional claims, the certificate should not be issued;

but, (3) if the procedural default is not clear and the substantive constitutional claims are debatable among jurists of reason, the certificate should be granted.” *Khaimov v. Crist*, 297 F.3d 783, 786 (8th Cir. 2002) (citing *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000)). *See also Langley v. Norris*, 465 F.3d 861, 863 (8th Cir. 2006).

After reviewing the record in this case, this Court determines that the standard for a certificate of appealability is not met and that petitioner’s motion seeking same should be and hereby is denied.

IT IS SO ORDERED this 8th day of January 2009.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE