

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

RODNEY HOLLY
ADC #122092

PLAINTIFF

v.

No. 5:08CV00327 JLH

LARRY B. NORRIS, Director,
Arkansas Department of Correction

DEFENDANT

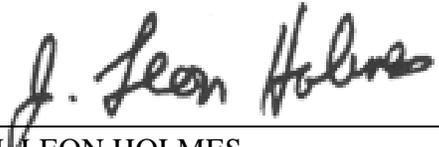
OPINION AND ORDER

On April 2, 2009, Magistrate Judge Henry L. Jones, Jr., issued a report and recommendation in which he recommended that Rodney Holly's petition for writ of habeas corpus be denied because Holly did not file his petition within the period of limitation provided in 28 U.S.C. § 2244(d). Upon *de novo* review, on June 1, 2009, the Court adopted the recommended disposition in its entirety and dismissed Holly's petition. Holly has now filed a request for certificate of appealability pursuant to 28 U.S.C. § 2253(c), which provides that unless a circuit justice or a judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from a final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court. 28 U.S.C. § 2253(c)(1)(A). The statute provides that a certificate of appealability may issue under paragraph 1 only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The Eighth Circuit has held that a certificate of appealability may be granted based upon "a substantial showing" on the limitations issue. *Watts v. Norris*, 356 F.3d 937, 940 (8th Cir. 2004). A substantial showing requires a demonstration that a reasonable jurist would find the district court ruling on the constitutional claim "debatable or wrong." *Winfield v. Roper*, 460 F.3d 1026, 1040 (8th Cir. 2006) (quoting *Tennard v. Dretke*, 542 U.S. 274, 276, 124 S. Ct. 2562,

159 L. Ed. 2d 384 (2004)). Holly has made no such demonstration in this case. Therefore, his request for certificate of appealability is DENIED. Document #24.

Holly has also filed an application to proceed *in forma pauperis* on appeal. Because the certificate of appealability is denied, his application to proceed *in forma pauperis* on appeal is DENIED AS MOOT. Document #25.

IT IS SO ORDERED this 26th day of June, 2009.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE