

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

**JAMES KELLY HAYNES  
ADC # 83056**

**PLAINTIFF**

**V.**

**5:08CV00337 JMM**

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

**DEFENDANT**

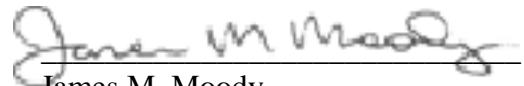
**ORDER**

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 (8<sup>th</sup> 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. Accordingly, the Motion for Certificate of Appealability (Docket # 37) is DENIED.

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

IT IS SO ORDERED this 20<sup>th</sup> day of January, 2010.

A handwritten signature in cursive script, appearing to read "James M. Moody", written in black ink on a white background.

James M. Moody  
United States District Judge