

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

**LOUIS E. RICHARD
ADC #096904**

PETITIONER

V.

NO. 5:09cv00087 BSM

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

RESPONDENT

ORDER

The court will construe petitioner's notice of appeal as a motion for a certificate of appealability ("COA"). For the reasons set forth below, the motion is denied.

The Antiterrorism and Effective Death Penalty Act ("AEDPA") provides that an appeal from the dismissal of a habeas action cannot be taken unless the trial court or the court of appeals grants the prisoner a COA. 28 U.S.C. § 2253(c)(1). A COA will issue only when an applicant has "made a substantial showing of the denial of a constitutional right." *Winfield v. Roper*, 460 F.3d 1026, 1040 (8th Cir. 2006) (quoting 28 U.S.C. § 2253(c)(2)). Furthermore, there must be a demonstration that "a reasonable jurist" would find the court's disposition of the constitutional claims or procedural rulings "debatable or wrong." *See Tennard v. Dretke*, 542 U.S. 274, 276 (2004); *see also Khaimov v. Crist*, 297 F.3d 783, 785 (8th Cir. 2002). Finally, if a certificate of appealability is granted, the order must "indicate which specific issue or issues" may be challenged on appeal. 28 U.S.C. § 2253(c)(3).

On July 22, 2009, the court denied as untimely the petition for writ of habeas corpus. Based upon well-established and controlling precedent, the court concludes that reasonable

jurists would not find the court's rulings to be debatable or wrong. Accordingly, the court will deny petitioner's motion for a COA. If petitioner wishes to appeal the court's dismissal of his habeas action, he must obtain a COA from the Eighth Circuit Court of Appeals pursuant to 28 U.S.C. § 2253(c)(1).

Accordingly, petitioner's motion for certificate of appealability (Doc. No. 20) is denied.

IT IS SO ORDERED this 21st day of August, 2009.



UNITED STATES DISTRICT JUDGE