

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

**MACEY TERRY
ADC #104363**

PETITIONER

v.

5:09-cv-00101-SWW-JJV

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

RESPONDENT

ORDER

Before the Court is a motion for a certificate of appealability by Petitioner Macey Terry.

After careful consideration, the Court concludes that the motion should be, and it is hereby, denied.

On December 11, 2009, the Court dismissed Petitioner’s § 2254 petition (docket entries #19, #20), and on February 16, 2010, Petitioner filed a notice of appeal (docket entry #22). Petitioner cannot appeal the dismissal of his habeas petition unless a circuit justice or a circuit or district judge issues a certificate of appealability, and a certificate of appealability will issue only when a petitioner makes a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595 (2000). A “substantial showing of the denial of a constitutional right” requires a demonstration “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting

Barefoot v. Estelle, 463 U.S. 880, 893 n. 4 (1983)).

For the reasons stated in the recommended disposition adopted by the Court, the Court finds that jurists of reason would not find it debatable that the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.

IT IS THEREFORE ORDERED that Petitioner's motion for a certificate of appealability is DENIED.

IT IS SO ORDERED THIS 8th DAY OF MARCH, 2010.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE