

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

**ROBERT T. MAXWELL
ADC #108778**

PETITIONER

VS.

CASE NO. 5:09CV00111 JMM

**D. WHITE, WARDEN
MAXIMUM SECURITY UNIT, ADC**

RESPONDENTS

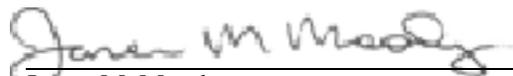
ORDER

Pending before the Court is petitioner's Motion for a Certificate of Appealability and a Motion to Alter or Amend Judgment. Petitioner filed these motions and a notice of appeal to the Court of Appeals for the Eighth Circuit on December 28, 2009.

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); *Winfield v. Roper*, 460 F.3d 1026 (8th Cir. 2006). 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.'" *Randolph v. Kemna*, 276 F.3d 401, 402 n.1 (8th Cir.2002) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). Petitioner has failed to make a substantial showing of the denial of any constitutional right and his Motion for Certificate of Appealability is denied (#45).

Petitioner's Motion to Alter the Judgment which the Court will construe as a Federal Rule of Civil Procedure 60(b) motion is denied for the reasons previously stated by the Court (#44). *See Hunter v. Underwood*, 362 F.3d 468, 475 (8th Cir. 2004) (district court may consider a Rule 60(b) motion even when notice of appeal has been filed). To the extent the petitioner is making new claims in this Rule 60(b) motion, these are dismissed as being a second or successive habeas petition. *See Ward v. Norris*, 577 F.3d 925, 933 (8th Cir. 2009).

IT IS SO ORDERED this 30 day of December, 2009.


James M. Moody
United States District Judge