

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

**JOHNNIE RAY HAWTHONE
ADC #110572**

PETITIONER

v. **5:09CV00193 BSM**

**STATE OF ARKANSAS;
LARRY NORRIS, Director,
Arkansas Department of Corrections**

RESPONDENT

ORDER

Johnnie Ray Hawthone's two requests for a certificate of appealability (Doc. Nos. 7, 14) are denied. An order adopting the magistrate judge's proposed findings of fact and recommended disposition was entered on September 10, 2009. The order dismissed Hawthone's case and provided that Hawthone may seek authorization to file a successive habeas petition from the Eighth Circuit Court of Appeals pursuant to 28 U.S.C. § 2244(b)(3)(A).

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 certificate of appealability ("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 COA is granted, the order must “indicate which specific issue or issues” may be challenged on appeal. 28 U.S.C. § 2253(c)(3).

Because neither the record herein nor the controlling precedent indicates that reasonable jurists would find this court’s rulings to be debatable or wrong, Hawthone’s request for a COA is denied. Hawthone is hereby directed to seek a COA from the Eighth Circuit Court of Appeals pursuant to 28 U.S.C. § 2253(c)(1). As explained above, Hawthone may also ask the Eighth Circuit Court of Appeals for permission to file a successive habeas petition.

Accordingly, Hawthone’s motions for certificate of appealability (Doc. Nos. 7, 14) are denied.

Dated this 13th day of November, 2009.


UNITED STATES DISTRICT JUDGE