

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

**JAMES WHITE  
ADC #136671**

**PETITIONER**

**v.**

**CASE NO.: 5:09CV00306 BD**

**RAY HOBBS, Interim Director,  
Arkansas Department of Correction**

**RESPONDENT**

**ORDER**

On April 22, 2010, this Court denied Petitioner's application for a writ of habeas corpus under 28 U.S.C. § 2254. Now pending is Petitioner's motion for certificate of appealability ("COA") (docket entry #13).<sup>1</sup> For the following reasons, this motion is DENIED.

Title 28 U.S.C. § 2253 limits the right of appeal in habeas corpus proceedings when the petitioner's detention arises out of process issued by a State court. 28 U.S.C. § 2253(c)(1)(A); *Slack v. McDaniel*, 529 U.S. 473, 482, 120 S.Ct. 1595, 1603 (2000). The Court may issue a COA only if a petitioner has made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court denies a habeas petition on procedural grounds, as here, the petitioner must also show "that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Jimenez v. Quarterman*, 129 S.Ct. 681, 684 (2009) (quoting *Slack*, 529 U.S. at

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<sup>1</sup> The motion for certificate of appealability is part of Petitioner's notice of appeal (#13).

484). The Court of Appeals for the Eighth Circuit has held the standard for issuance of a COA to be a “modest standard.” *Randolph v. Kemna*, 276 F.3d 401, 403 n. 1 (8th Cir. 2002) (quoting *Charles v. Hickman*, 228 F.3d 981, 982 n. 1 (9th Cir. 2000)).

In this case, the Petitioner has not made a substantial showing and, in fact, has not made even a modest showing, that he was deprived of a constitutional right. The Court did not reach the merits of this petition because Petitioner not only procedurally defaulted his claims, but he also failed to timely file his petition. Petitioner’s justification for the procedural failure does not excuse procedural default. Regarding the timeliness of the petition, and despite Petitioner’s argument to the contrary, his petition was not filed one day before the end of the one-year limitations period. Because Petitioner has failed to present a basis for the Court to issue a certificate of appealability, his motion for certificate of appealability (#13) is denied.

IT IS SO ORDERED, this 25th day of May, 2010.

  
UNITED STATES MAGISTRATE JUDGE