

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

**JOHNNY LEE CRAIG
ADC # 091725**

PETITIONER

v.

CASE NO.: 5:09CV00348 BD

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

RESPONDENT

ORDER

On April 27, 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).¹ 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

¹ 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, Petitioner has not made even a modest showing that he was deprived of a constitutional right. This Court did not reach the merits of the petition because Petitioner failed to timely file his petition. Petitioner did not provide any justification for his failure to timely file. In addition, Petitioner has not stated why he disagrees with the Court’s limitations finding or how the Court should have calculated his 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 24th day of June, 2010.


UNITED STATES MAGISTRATE JUDGE