

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

DARWIN GAYE

PETITIONER

v.

NO. 5:09CV00351 SWW

LARRY NORRIS, Director of the
Arkansas Department of Correction

RESPONDENT

ORDER

By order and judgment entered March 8, 2010, the Court adopted the recommended disposition issued by United States Magistrate Judge H. David Young and dismissed the petition filed in this case on the ground that Petitioner's claims are procedurally barred. On March 29, 2010, Petitioner filed a notice of appeal. Petitioner cannot appeal the dismissal of his habeas petition unless a circuit justice or a circuit or district judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22(b)(1). A certificate of appealability will issue only when a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The extent of the substantial showing varies according to whether the court denied applicant's claim on procedural grounds or on the merits. *See Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L. Ed.2d 542 (2000). When a district court denies a habeas petition without reaching the merits of the underlying constitutional claim, a certificate of appealability will issue only when the petitioner shows that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that

jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Id.*

For the reasons stated in the recommended disposition adopted by the Court, the Court concludes that jurists of reason would not find it debatable whether the Court was correct in making its ruling.

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

IT IS SO ORDERED THIS 7TH DAY OF APRIL, 2010.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE