

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

PHILLIP HAMMOCK

PETITIONER

v.

NO. 5:10CV00149 SWW

RAY HOBBS, interim Director of the
Arkansas Department of Correction

RESPONDENT

ORDER

Before this Court is what has been docketed as petitioner Phillip Hammock's motion for a certificate of appealability [doc.#16].¹ This Court has the authority to issue such a certificate. *See, e.g., Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997); *Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir. 1997). A certificate of appealability certifies that the applicant has made a substantial showing of the denial of a constitutional right, that is, a showing that the issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings. *See, e.g., Carson v. Director of the Iowa Dept. of Correctional Services*, 150 F.3d 973, 975 (8th Cir. 1998). With respect to claims that are procedurally barred, the Eighth Circuit has summarized the factors to consider when determining whether a certificate of appealability should issue when a habeas claim is denied on

¹ Although this same day the Court denied the motion as moot pursuant to Doc.#13, the Court issues this Order elaborating on the standards the Court utilized in addressing petitioner's motion. The Court vacates the denial as moot and issues this order instead.

procedural grounds: “(1) if the claim is clearly procedurally defaulted, the certificate should not be issued; (2) even if the procedural default is not clear, if there is no merit to the substantive constitutional claims, the certificate should not be issued; but, (3) if the procedural default is not clear and the substantive constitutional claims are debatable among jurists of reason, the certificate should be granted.” *Khaimov v. Crist*, 297 F.3d 783, 786 (8th Cir. 2002) (citing *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000)). *See also Langley v. Norris*, 465 F.3d 861, 863 (8th Cir. 2006).

After reviewing the record in this case, this Court determines that the standard for a certificate of appealability is not met and that petitioner’s motion seeking same should be and hereby is denied.

IT IS SO ORDERED this 17th day of September 2010.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE