

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

DEMETRIUS LETRON HEARD,	*	
ADC #601345	*	
Petitioner,	*	
v.	*	
	*	No. 5:11-cv-00216-JJV
RAY HOBBS, Director	*	
Arkansas Department of Correction	*	
	*	
Respondent.	*	

ORDER

Mr. Heard filed a Notice of Appeal (Doc. No. 16), which this Court construes as a Motion for Certificate of Appealability.¹ *See Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir. 1997). For the following reasons, Mr. Heard’s Motion is DENIED.

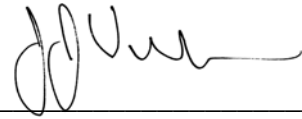
Under the Antiterrorism and Effective Death Penalty Act (AEDPA), an inmate may not appeal a district court’s dismissal of his or her habeas Petition unless that court issues a certificate of appealability (COA). 28 U.S.C. § 2253. In cases where the district court dismissed the inmate’s petition on procedural grounds and did not reach the merits of the inmate’s claims, a COA will issue only “when the prisoner shows, at least, 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.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Notably, “[s]ection 2253 mandates that both showings be made before the court of appeals may entertain the appeal.” *Id.*

The Court finds that Mr. Heard cannot make the requisite showing. He filed his Petition

¹This Court recognizes that 28 U.S.C. § 2253 does not require an application and has authority to consider a certificate of appealability *sua sponte*. *Thomas v. Crosby*, 371 F.3d 782, 794-813 (11th Cir. 2004), *Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000).

approximately six (6) months after the one-year statute of limitations ran, and the substance of the claims in the Petition does not indicate that Mr. Heard is entitled to equitable tolling. Therefore, Mr. Heard's Motion is DENIED.

IT IS SO ORDERED this 11th day of June, 2012.

A handwritten signature in black ink, appearing to read 'Joe J. Volpe', written above a horizontal line.

JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE