

1 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
2 district judge, the final order shall be subject to review, on appeal, by the court
of appeals for the circuit in which the proceeding is held.

3 (b) There shall be no right of appeal from a final order in a proceeding to test the
4 validity of a warrant to remove to another district or place for commitment or trial
5 a person charged with a criminal offense against the United States, or to test the
6 validity of such person's detention pending removal proceedings.

7 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an
8 appeal may not be taken to the court of appeals from—

9 (A) the final order in a habeas corpus proceeding in which the
10 detention complained of arises out of process issued by a State
11 court; or

12 (B) the final order in a proceeding under section 2255.

13 (2) A certificate of appealability may issue under paragraph (1) only if the
14 applicant has made a substantial showing of the denial of a constitutional right.

15 (3) The certificate of appealability under paragraph (1) shall indicate which
16 specific issue or issues satisfy the showing required by paragraph (2).

17 If a court denies a petitioner's petition, the court may only issue a certificate of appealability
18 "if jurists of reason could disagree with the district court's resolution of his constitutional claims or
19 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed
20 further." Miller-El, 123 S.Ct. at 1034; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the
21 petitioner is not required to prove the merits of his case, he must demonstrate "something more than
22 the absence of frivolity or the existence of mere good faith on his . . . part." Miller-El, 123 S.Ct. at
23 1040.

24 On March 15, 2007, this Court adopted the finding and recommendations of the magistrate
25 judge, and dismissed the petition with prejudice. (Court Doc. 19.) The Court based its dismissal on
26 the expiration of the one year statute of limitations under 28 U.S.C. § 2254(d). (Id. at 3-4.)
27 According to the calculations of the Court, the statute of limitations expired on February 19, 2004
28 and the petition was filed nearly a year later on February 8, 2005. (Id.) Petitioner filed a motion for
reconsideration, claiming the delay in filing was based on his attorney's demand for additional
payment for continued representation and the fact he had to rely on assistance from jailhouse
lawyers. (Court Doc. 22.) This Court found such claims unpersuasive as to account for his delay in
filing after the expiration of the statute of limitations and denied the motion for reconsideration on

1 January 3, 2008. (Court Doc. 25.)

2 In the present case, the Court finds that reasonable jurists would not find the Court's
3 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or
4 deserving of encouragement to proceed further. Petitioner has not made the required substantial
5 showing of the denial of a constitutional right. Accordingly, the Court hereby DECLINES issuance
6 of a certificate of appealability.

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8 IT IS SO ORDERED.

9 **Dated:** May 25, 2010

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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