

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

HECTOR ROY WATSON,

Petitioner,

-vs-

Case No. 2:08-cv-353-FtM-29DNF
Case No. 2:06-cr-46-FTM-29DNF

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

This matter comes before the Court on Petitioner's Notice of Appeal (Doc. #18) filed on April 15, 2009. Pursuant to FED. R. APP. P. 22(b)(1), this is deemed to also include an application for certificate of appealability (Doc. #19).

Under 28 U.S.C. § 2253(c)(1), an appeal cannot be taken from a final order in a habeas proceeding unless a certificate of appealability issues. The decision to issue a certificate of appealability requires "an overview of the claims in the habeas petition and a general assessment of their merits." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Specifically, where a district court has rejected a prisoner's constitutional claims on the merits, the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. See Slack v. McDaniel, 529 U.S. 473, 484 (2000); Peoples v. Haley, 227 F.3d 1342 (11th Cir. 2000). When

the district court has rejected a claim on procedural grounds, the petitioner must show 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, 529 U.S. at 484; Franklin v. Hightower, 215 F.3d 1196, 1199 (11th Cir. 2000) (per curiam), cert. denied, 121 S. Ct. 1738 (2001). "This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims." Miller-El v. Cockrell, 537 U.S. at 336.


On December 30, 2008, the Court entered an Opinion and Order (Doc. #14) denying petitioner's Omnibus Motion to Vacate, Set Aside, or Correct Sentence Pursuant to Title 28 U.S.C. § 2255 & Memorandum of Legal Citations of Authority as to all claims. Judgment (Doc. #15) was entered the same day. On April 10, 2009, petitioner filed a Motion for an Extension of Time to File Notice of Appeal, Pursuant to Fed.R.App.P. 4(a)(5) (Doc. #16). On April 15, 2009, the Court granted the extension of time and directed the Clerk to file the proposed Notice of Appeal. (Doc. #17.) The Notice of Appeal was filed on April 15, 2009. Upon review of the file, the Court finds that petitioner has failed to show that jurists of reason would find the Court's assessment of the constitutional claim debatable or wrong or that the Court was incorrect in its procedural rulings.

Accordingly, it is now

ORDERED:

Petitioner's application for certificate of appealability (Doc. #19), deemed included in the Notice of Appeal, is **DENIED**.

DONE AND ORDERED at Fort Myers, Florida, this 20th day of April, 2009.



JOHN E. STEELE
United States District Judge

Copies:
All Parties of Record

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303