

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LUTHER LEON AUSTIN,

Petitioner,

-vs-

Case No. 2:09-cv-247-FtM-29DNF
Case No. 2:98-cr127-FTM-29DNF

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

This matter comes before the Court on Petitioner's Notice of Appeal (Doc. #8) filed on June 22, 2009. Pursuant to FED. R. APP. P. 22(b)(1), this is deemed to also include an application for certificate of appealability (Doc. #9).

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 June 12, 2009, the Court entered an Order (Doc. #7) denying reconsideration of the Opinion and Order (Doc. #4) dismissing his petition as successive. Upon review, the Court finds that petitioner has failed to show that jurists of reason would find that the Court was incorrect in its procedural rulings. Therefore, the application for a certificate of appealability will be denied.

Accordingly, it is now

ORDERED:

Petitioner's application for certificate of appealability (Doc. #9), deemed included in the Notice of Appeal, is **DENIED**.

DONE AND ORDERED at Fort Myers, Florida, this 23rd day of June, 2009.



JOHN E. STEELE
United States District Judge

Copies:
All Parties of Record

United States Court of Appeals
Eleventh Circuit
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