

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

RALPH WILLIAMS, JR.,

Petitioner,

v.

CASE NO. 8:07-CV-458-T-30EAJ

SECRETARY, DEPARTMENT OF
CORRECTIONS, et al.,

Respondents.

ORDER

This matter comes before the Court for consideration of Petitioner's construed notice of appeal (Dkt. 30) of the April 20, 2009 decision dismissing his petition for relief under 28 U.S.C. § 2254 as time-barred (See Dkt. 27), which the Court construes as an application for certificate of appealability filed pursuant to Rule 22, Fed. R. App. P.,¹ and 28 U.S.C. §2253² (Dkt. 31). Petitioner did not pay the appellate filing fee and costs or seek leave to proceed on appeal *in forma pauperis*.

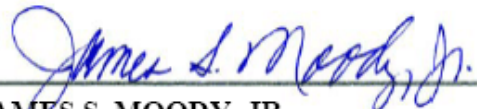
¹"Certificate of Appealability. (1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. §§ 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. §§ 2253(c). If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue. . . . If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals." Rule 22, Fed. R. App. P.

²"Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from -- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court;. . . (2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c).

To merit a certificate of appealability, Petitioner must show that reasonable jurists would find debatable both (1) the merits of the underlying claim and (2) the procedural issues he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir 2001). Because the petition is time-barred and Petitioner has failed to make a sufficient showing of the “extraordinary circumstances” required to warrant equitable tolling of the limitations period, and because his claims are without merit, Petitioner has failed to satisfy both prongs of the *Slack* test. 529 U.S. at 484. Petitioner has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c).

ACCORDINGLY, the Court **ORDERS** that Petitioner’s construed application for a certificate of appealability is **DENIED** (Dkt. 31).

DONE and **ORDERED** in Tampa, Florida on April 30, 2009.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

SA:sfc
Copy to: Petitioner pro se
Counsel of Record