

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

JAMES R. BARNES,

Petitioner,

v.

Case No: 8:14-cv-2385-T-30TGW

FLORIDA DEPARTMENT OF
CORRECTIONS and MICHAEL
CREWS,

Respondents.

ORDER OF DISMISSAL

Before the Court is the Petition for Writ of Habeas Corpus (Dkt. #1) and Memorandum in Support (Dkt. #2). Upon review, the Court finds that Barnes previously filed a § 2254 petition (2:11-cv-362-JES-CM, Middle District of Florida) which was denied. In the present petition, denominated a § 2241 petition, Barnes seeks to raise ineffective assistance of counsel claims from his state case. He contends *Martinez v. Ryan*, 132 S.Ct. 1309 (2012) authorizes this Court to entertain those claims in a § 2241 petition. Barnes is wrong. *Martinez* dealt with whether a claim could survive procedural default and be brought in a timely § 2254 petition. *Martinez* does not authorize the untimely raising of the claim or the circumvention of the requirement to get 11th Circuit approval prior to bringing a second or successive § 2254 petition.

It is therefore **ORDERED AND ADJUDGED** as follows:

1. This cause is dismissed with prejudice.
2. Any pending motions are denied as moot.


3. The Clerk is directed to close this case.

**CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL
IN FORMA PAUPERIS DENIED**

IT IS FURTHER ORDERED that Petitioner is not entitled to a certificate of appealability. A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a certificate of appealability. *Id.* "A certificate of appealability may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right." *Id.* at § 2253(c)(2). To make such a showing, Petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," *Tennard v. Dretke*, 542 U.S. 274, 282 (2004)(quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)), or that "the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003)(quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4 (1983)). Petitioner has not made the requisite showing in these circumstances.

Finally, because Petitioner is not entitled to a certificate of appealability, he is not entitled to appeal *in forma pauperis*.

DONE and **ORDERED** in Tampa, Florida, this 29th day of October, 2014.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

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