

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION**

TED SMITH,

Petitioner,

v.

CASE NO. 1:11-cv-00265-MP-GRJ

STATE OF FLORIDA, and  
PAM BONDI, Florida Attorney General,

Respondents.

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**ORDER**

This matter is before the Court on petitioner's motion for certificate of appealability, construed from his notice of appeal. (Doc. 35). On January 15, 2013, petitioner filed a notice of interlocutory appeal of the Court's January 8, 2013 order (doc. 30) affirming the magistrate judge's December 28, 2012 order (doc. 28) denying petitioner's "Motion to Vacate Void/ Judgment/ Order and Release Petitioner According to Federal Rule Civil Procedure 60(b)(4)" (doc. 27).

An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding unless the Court issues a certificate of appealability. *See* 28 U.S.C. 2253(c)(1). The Court may issue a certificate of appealability only if the applicant has made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. 2253(c)(2).

For the reasons stated in the magistrate judge's order (doc. 28) and the Court's order affirming the magistrate judge's order (doc. 30), the Court finds that petitioner fails to make a substantial showing of the denial of a constitutional right and the issues are not adequate enough to deserve encouragement to proceed further.

Accordingly, it is hereby **ORDERED AND ADJUDGED**:

Petitioner's motion for certificate of appealability (doc. 35) is DENIED.

**DONE AND ORDERED** this 24th day of January, 2013

*s/Maurice M. Paul*  
Maurice M. Paul, Senior District Judge