

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

BOBBY R. DURHAM,
Petitioner,

vs.

Case No: 3:06cv196/RV/EMT

CHARLIE CRIST, et al.,
Respondents.

ORDER

This cause is before the court on Petitioner's Notice of Appeal, construed as a motion for certificate of appealability (Docs. 30, 31).¹ Unless a certificate of appealability is issued, Petitioner may not take an appeal from the final order denying § 2254 relief. *See* 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22(b)(1). Such a certificate may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Upon review of the file, the court concludes that because Petitioner has not made a substantial showing of the denial of a constitutional right, and for the reasons set forth in this court's July 6, 2009 Order (Doc. 28) adopting and incorporating the Magistrate Judge's Report and Recommendation filed on May 26, 2009 (Doc. 22), a certificate of appealability will be denied.

Accordingly, it is **ORDERED**:

Petitioner's notice of appeal, construed as a motion for certificate of appealability (Docs. 30, 31), is **DENIED** and no certificate shall issue.

DONE AND ORDERED this 28th day of July 2009.

/s/ Roger Vinson _____

ROGER VINSON
SENIOR UNITED STATES DISTRICT JUDGE

¹The Eleventh Circuit instructed in Edwards v. United States, 114 F.3d 1083 (11th Cir. 1997) that district courts must treat notices of appeal in Section 2254 actions as applications for certificates of appealability.