

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

JAMES W. DAVIS, III,  
Petitioner,

vs.

Case No: 3:07cv49/LAC/EMT

WALTER A. McNEIL,  
Respondent.

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**ORDER**

This cause is before the court on Petitioner's notice of appeal and motion for certificate of appealability (Docs. 56, 57). 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).

After 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 the court's August 12, 2008 order (Doc. 54) adopting and incorporating the Magistrate Judge's Report and Recommendation filed on June 4, 2008 (Doc. 48), a certificate of appealability shall be denied.

Accordingly, it is **ORDERED**:

Petitioner's motion for certificate of appealability (Doc. 57) and notice of appeal (Doc. 56) are **DENIED**, and no certificate shall issue.

**DONE AND ORDERED** this 15<sup>th</sup> day of September, 2008.

*s/L.A. Collier*

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**LACEY A. COLLIER**  
**SENIOR UNITED STATES DISTRICT JUDGE**