

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

STEPHEN M. MARTENS,  
Petitioner,

vs.

Case No: 3:07cv323/MCR/EMT

WARDEN CHARLES HALLEY, et al.,  
Respondents.

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**ORDER**

This cause is before the court on Petitioner's notice of appeal, construed as a motion for certificate of appealability.<sup>1</sup> (Docs. 31, 32.) 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 this court's order dated March 16, 2009 (doc. 36) adopting and incorporating the Magistrate Judge's Report and Recommendation filed on January 29, 2009 (doc. 28), 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. 31, 32) is **DENIED** and no certificate shall issue.

**DONE and ORDERED** this 19th day of March, 2009.

*s/ M. Casey Rodgers*  

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**M. CASEY RODGERS**  
**UNITED STATES DISTRICT JUDGE**

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