

**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.

ORDER

This cause is before the court on Petitioner's notice of appeal and motion for certificate of appealability (Docs. 42, 43). 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 March 16, 2009 order (Doc. 36) adopting and incorporating the Magistrate Judge's Report and Recommendation filed on January 29, 2009 (Doc. 28), a certificate of appealability shall be denied.

Accordingly, it is **ORDERED**:

Petitioner's motion for certificate of appealability and notice of appeal (Docs. 42, 43) are **DENIED**, and no certificate shall issue.

DONE AND ORDERED this 5th day of May 2009.

s/ M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE