

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

MICHAEL W. LINDSEY,

Petitioner,

vs.

Case No. 3:08cv84-RV/WCS

WALTER McNEIL,

Respondent.

_____ /

ORDER ON § 2254 APPEAL

This cause is before the court on Petitioner's notice of appeal and motion for certificate of appealability. Docs. 33 and 34.

Petitioner appeals the denial of his 28 U.S.C. § 2254 petition, so a certificate of appealability is required. § 2253(c)(1)(A); Fed.R.App.P. 22(b)(1). "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." § 2253(c)(2).

To obtain a COA under § 2253(c), a habeas prisoner must make a substantial showing of the denial of a constitutional right, a demonstration that, under *Barefoot*, includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further."

Slack v. McDaniel, 529 U.S. 473, 483-84, 120 S.Ct. 1595, 1603-04, 146 L.Ed.2d 542 (2000); *quoting*, Barefoot v. Estelle, 463 U.S. 880, 893, n. 4 103 S.Ct. 3383, 3394, n. 4, 77 L.Ed.2d 1090 (1983).

For the reasons set forth in the report and recommendation as adopted by the court, docs. 27 and 31, Petitioner is not entitled to a certificate of appealability as he has not made a substantial showing of the denial of a constitutional right.

Accordingly, it is **ORDERED**:

Petitioner's motion (doc. 34) is **DENIED** and a certificate of appealability **SHALL NOT ISSUE**.

DONE AND ORDERED this 8th day of March, 2010.

/s/ Roger Vinson _____
ROGER VINSON
SENIOR UNITED STATES DISTRICT JUDGE