

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

LARRY L. BLAND # 905797,
Petitioner,

vs.

Case No. 3:09cv174/MCR/EMT

STATE OF FLORIDA, et al.,
Respondents.

ORDER

This cause is before the court on Petitioner's Notice of Appeal (doc. 21), and Motion for Certificate of Appealability (doc. 22).¹ Unless a certificate of appealability is issued, the 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 the Petitioner has not made a substantial showing of the denial of a constitutional right, and for the reasons set forth in this court's June 10, 2009, Order (doc. 18) adopting and incorporating the Magistrate Judge's Report and Recommendation filed on May 27, 2009 (doc. 14), a certificate of appealability will be denied. For the same reasons there is no good faith

¹ Petitioner filed this action pursuant to 28 U.S.C. § 2241. Because Petitioner is currently imprisoned pursuant to a judgment of a state court, his federal habeas petition is subject to the rules and restrictions imposed upon petitions brought under 28 U.S.C. § 2254. See *Medberry v. Crosby*, 351 F.3d 1049, 1054 (11th Cir. 2003) (holding that for those imprisoned pursuant to a state court judgment, the habeas corpus remedy is authorized by § 2241 but is also subject to § 2254 and all of its attendant restrictions).

basis for an appeal; accordingly, although Petitioner has not sought leave to proceed *in forma pauperis*, he is not entitled to do so. Fed.R.App.P. 24(a).

Accordingly, it is **ORDERED**:

Petitioner's motion for certificate of appealability (doc. 22) is **DENIED**. No certificate shall issue.

DONE AND ORDERED this 9th day of July 2009.

s/ *M. Casey Rodgers*
M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE