

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

DONALD DAVID DILLBECK,

Petitioner,

v.

CASE NO.: 4:07-cv-388/SPM

WALTER A. McNEIL,

Secretary, Fla. Dept. of Corrections, et al., and

BILL McCOLLUM,

**Attorney General of Florida,
Respondents.**

**ORDER ON MOTION FOR RECONSIDERATION OF DENIAL
OF CERTIFICATE OF APPEALABILITY**

This cause is before the court on Petitioner's motion for reconsideration of the denial of a certificate of appealability (doc. 21). In the order denying Petitioner's amended habeas petition (doc. 19), this court found no substantial showing of the denial of a constitutional right in this case, and therefore denied issuance of a certificate of appealability. See doc. 19 at 51.

A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a certificate of appealability, but only if the applicant has made a substantial showing of the denial of a constitutional right. See id. at § 2253(c)(2). To make such a showing, a petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," Tennard v. Dretke, 542 U.S. 274, 282, 124 S. Ct. 2562, 2569, 159 L. Ed. 2d 384 (2004) (quoting Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 1603-04, 146 L. Ed. 2d 542 (2000)), or that "the issues presented were 'adequate to

deserve encouragement to proceed further,” Miller-EI v. Cockrell, 537 U.S. 322, 336, 123 S. Ct. 1029, 1039, 154 L. Ed. 2d 931 (2003) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n. 4, 103 S. Ct. 3383, 3395, 77 L. Ed. 2d 1090 (1983)). The court has carefully considered Petitioner’s motion for reconsideration (doc. 21) and Respondents’ response to this motion (doc. 22), and concludes that because Petitioner has not made the requisite showing in these circumstances, and for the reasons set forth in this court’s March 27, 2008 order (doc. 16) and January 29, 2010 order (doc. 19), the certificate of appealability will be denied.

Accordingly, it is ORDERED:

Petitioner’s motion for reconsideration of the denial of a certificate of appealability (doc. 21) is DENIED, and no certificate shall issue.

DONE and ORDERED this nineteenth day of February, 2010.

s/ Stephan P. Mickle

Stephan P. Mickle
Chief United States District Judge