

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

SALVADOR F. MUSTELIER,

Petitioner,

vs.

CASE NO.: 5:09cv210-SPM/AK

JACKSON CORRECTIONAL INSTITUTION,

Respondent.

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ORDER DENYING CERTIFICATE OF APPEALABILITY

This cause comes before the Court upon a limited remand from the Eleventh Circuit Court of Appeals (doc. 20) for a determination of whether a certificate of appealability should issue pursuant to Petitioner's Notice of Appeal (doc. 9) and Federal Rule of Appellate Procedure 22(b)(1).

Although Petitioner is in state custody, he filed his habeas petition under 28 U.S.C. § 2241. As explained in the Magistrate Judge's Report and Recommendation (doc. 5), which the Court adopted (doc. 7) despite the Petitioner's objection (doc. 6), Petitioner cannot bypass the requirements of 28 U.S.C. § 2254 and file a § 2241 petition simply because he has been denied relief on a previously filed habeas petition. Petitioner has failed to make a substantial showing of the denial of a constitutional right with regard to the denial of his § 2241 petition on these procedural grounds. Accordingly, the Court will

not issue a certificate of appealability. 28 U.S.C. § 2253(c)(2).

SO ORDERED this nineteenth day of March, 2010.

s/ Stephan P. Mickle

Stephan P. Mickle
Chief United States District Judge