

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-20704-CIV-GRAHAM
MAGISTRATE JUDGE P.A. WHITE

JOHNNIE MACK OWENS,	:	
	:	
Petitioner,	:	
v.	:	<u>REPORT RECOMMENDING DENIAL OF</u>
	:	<u>CERTIFICATE OF APPEALABILITY</u>
	:	<u>STATE HABEAS CORPUS</u>
STATE OF FLORIDA,	:	(de#27 & 29)
	:	
Respondent.	:	

This Cause is before the Court upon the petitioner's notice of appeal filed January 12, 2009 (DE#26) and motion of the petitioner for certificate of appealability (DE#27) filed pursuant to 28 U.S.C. §2253 and Fed.R.App.P. 22(b), both as amended April 24, 1996. The petitioner also filed a motion to correct error (DE#29) This motions have been referred to the undersigned for consideration and report.

A certificate of appealability shall not issue unless the Court rules that upon one or more specific issues the petitioner has made a substantial showing of the denial of a constitutional right.

To merit a certificate of appealability, the appellant must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issue he seeks to raise. See 28 U.S.C. §2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000).

After reevaluation of the claims, if the Court grants such a certificate it must state which specific issue or issues satisfy the requirement that the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. §2253(c)(2) and (3). Review of the file in this case reveals that no such showing has been made. The petitioner's petition for writ of habeas corpus has been dismissed as time barred. He is now seeking to circumvent the time bar and appeal his issues on their merits. ¹

It is therefore recommended that the Court deny the motion for certificate of appealability. (DE#27). The motion to correct error (DE#29) should be denied as moot.

Objections to this report may be filed with the District Judge within ten days of receipt of a copy of the report.

Dated this 24th day of February, 2009.



UNITED STATES MAGISTRATE JUDGE

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Appeals Section
United States District Court

¹The petitioner may wish file a motion for a certificate of appealability solely appealing the issue of timeliness.