

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-21056-CIV-GRAHAM
MAGISTRATE JUDGE P.A. WHITE

BYRON FLOYD,	:	
	:	
Petitioner,	:	
v.	:	<u>REPORT RECOMMENDING DENIAL OF</u>
	:	<u>CERTIFICATE OF APPEALABILITY</u>
	:	<u>STATE HABEAS CORPUS</u>
WALTER MCNEIL,	:	<u>AND MOTION FOR IFP</u>
	:	(de#21 & 22)
Respondent.	:	

This Cause is before the Court upon the petitioner's application for a certificate of appealability (DE#21) pursuant to 28 U.S.C. §2253 and Fed.R.App.P. 22(b), both as amended April 24, 1996, and motion to proceed in forma pauperis on appeal (DE#22). The motions have been referred to the Undersigned Magistrate Judge on December 5, 2007, 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 was denied on the merits in a detailed Report entered by the Undersigned Magistrate Judge. The petitioner's claims, as stated in the Magistrate Judge's Report and Recommendation are contradicted by the record.

It is therefore recommended that the Court deny the motion for certificate of appealability. (DE#21)

The Undersigned recommends that the application for certificate of appealability be denied, and it is therefore recommended, pursuant to Fed.R.App.P. 24(a) that the motion to proceed in forma pauperis on appeal be denied (DE#22) because the appeal is not taken in good faith, there having been no substantial showing of the denial of a constitutional right.

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

Dated this 16th day of April, 2009.



UNITED STATES MAGISTRATE JUDGE

cc: Byron Floyd, Pro Se
DC#072934
South Bay Correctional Facility
Address of record

Attorney of Record

Appeals Section
United States District Court