

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

GREGORY LOWE,	:	
	:	
Petitioner	:	
	:	
VS.	:	
	:	NO. 5:10-CV-4 (MTT)
Warden WILLIAM M. TERRY,	:	
	:	
Respondent	:	<u>ORDER</u>

Before the Court is petitioner **GREGORY LOWE’S** notice of appeal, construed as a motion for a Certificate of Appealability (“COA”), from the Court’s December 8, 2010, order, which adopted Magistrate Judge Charles W. Weigle’s recommendation that petitioner’s 28 U.S.C. § 2254 motion be denied as untimely. Under section 2253(c)(2), a COA may issue only if the applicant makes “a substantial showing of the denial of a constitutional right.” This requires a petitioner to demonstrate that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *See also Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

For the reasons stated in Magistrate Judge Weigle’s recommendation and this Court’s order accepting the same, the Court finds reasonable jurists could not find that a dismissal of petitioner’s claims was debatable or wrong. Accordingly, it is hereby **ORDERED** that petitioner’s application for a COA be **DENIED**.

It is further **ORDERED** that petitioner’s motion for leave to proceed IFP on appeal be **DENIED AS MOOT**.

SO ORDERED, this 28th day of January, 2011.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT