

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

ERNESTO CASTILLO,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 5:13-CV-101(MTT)
)	
Warden GLEN JOHNSON,)	
)	
Respondent.)	
)	

ORDER

Petitioner Ernesto Castillo has filed a Notice of Appeal (Doc. 8) from this Court's Order dismissing without prejudice his Petition for Writ of Habeas Corpus (Doc. 5). The Eleventh Circuit Court of Appeals has requested that this Court issue an order on a certificate of appealability. Under 28 U.S.C. § 2253(c)(2), a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right.

In his Notice of Appeal, the Petitioner challenges this Court's Order because the Court did not consider his brief when it denied his Petition. However, the Petitioner did not submit his brief until after the Court issued its Order dismissing his Petition. Further, the Petitioner concedes in his Petition that he did not exhaust state remedies. (Doc. 1 at 6). Contrary to the Petitioner's assertion that he was not required to exhaust state remedies pursuant to 28 U.S.C. § 2241, he is in custody pursuant to the judgment of a state court and alleges he is being held in violation of the United States Constitution, and therefore, he is subject to the restrictions of 28 U.S.C. § 2254. See *Peoples v.*

Chatman, 393 F.3d 1352, 1353 (11th Cir. 2004) (“[F]or those imprisoned pursuant to a State court judgment, ... the habeas corpus remedy is authorized by § 2241, but also subject to § 2254 and all of its attendant restrictions.”). Accordingly, the Petitioner was required to exhaust his state remedies prior to filing his Petition with this Court pursuant to 28 U.S.C. § 2254(b)(1).

For the reasons stated above and for the reasons stated in this Court’s Order dismissing the Petition, the Court finds that the Petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly, the application for a certificate of appealability is **DENIED**.

SO ORDERED, this 7th day of June, 2013.

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