

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DENNIS FITTS,

Petitioner,

vs.

No. 3:10-cv-00494-DRH-DGW

RICK HARRINGTON,

Respondent.

ORDER

HERNDON, Chief Judge:

Pending before the Court is petitioner's motion for certificate of appealability (Doc. 24). For the following reasons petitioner's motion will be **DENIED**.

Under the 2009 Amendments to Rule 11(a) of the Rules Governing Section 2254 Proceedings, the "district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." A petitioner cannot appeal a dismissal of his habeas petition unless he obtains a Certificate of Appealability. See 28 U.S.C. § 2253(c)(1). A Certificate of Appealability may only be issued where the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Evans v. Circuit Ct. of Cook Cnty., Ill.*, 569 F.3d 665, 667 (7th Cir. 2009). This requirement has been interpreted by the Supreme Court to mean that an applicant must show that "reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to

proceed further.” *Miller-el v. Cockrell*, 537 U.S. 322, 336, 123 S.Ct. 1029 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000)). While a petitioner need not show that his appeal will succeed, he must show “something more than the absence of frivolity” or the existence of mere “good faith” on his part. *Id.* at 338 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983)).

Here, the undersigned finds no basis for a determination that its decision to dismiss petitioner’s claims was debatable or incorrect. Petitioner asserted two claims, one of which was procedurally defaulted. Upon review of the record, the Court certifies that the remaining claim is not debatable among jurists of reason and that he could not make a substantial showing under 28 U.S.C. § 2254 of a denial of a constitutional right.

Accordingly, the Court **DENIES** petitioner’s Certificate of Appealability (Doc. 24).

IT IS SO ORDERED.

Signed this 30th day of October, 2013.

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David R. Herndon
Date: 2013.10.30
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**Chief Judge
United States District Court**