

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

SCOTT WELDON,

Petitioner,

v.

No. 14-0691-DRH

UNITED STATES OF AMERICA,

Respondent.

ORDER

HERNDON, District Judge:

This matter comes before the Court for case management. Based on the reasons the Court stated on the record in denying Weldon's 28 U.S.C. § 2255 petition and the following, the Court **DECLINES** to issue a certificate of appealability in this matter. On November 29, 2016, the Court held a hearing regarding Weldon's 28 U.S.C. § 2255 petition which was on remand from the Seventh Circuit Court of Appeals (Docs. 40, 42 & 44). Appointed counsel Jerry Brown, appeared for Weldon and Assistant United States Attorney Robert Garrison

appeared for the government. During the hearing the Court orally denied and dismissed with prejudice Weldon's petition.

Under the 2009 Amendments to Rule 11(a) of THE RULES GOVERNING SECTION 2255 PROCEEDINGS, the "district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Thus, the Court must determine whether petitioner's claims warrant a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(2).

A *habeas* petitioner does not have an absolute right to appeal a district court's denial of his *habeas* petition; he may appeal only those issues for which a certificate of appealability have been granted. *See Sandoval v. United States*, 574 F.3d 847, 852 (7th Cir. 2009). A *habeas* petitioner is entitled to a certificate of appealability only if he can make a substantial showing of the denial of a constitutional right. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); 28 U.S.C. § 2253(c)(2). Under this standard, petitioner must demonstrate that, "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Id.* (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

As to Weldon's claims, the Court finds that reasonable jurists would not debate that the petition does not present a valid claim of the denial of a constitutional right. Reasonable jurists could not debate that the petition should have been resolved in a different manner, as petitioner's claims of ineffective

assistance of counsel did not demonstrate resulting prejudice. Therefore, the Court declines to certify any issues for review pursuant to 28 U.S.C. §2253(c).

IT IS SO ORDERED.

Signed this 29th day of November, 2016.

 Digitally signed by
Judge David R. Herndon
Date: 2016.11.29
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United States District Judge