

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DENNIS A. HIGGINS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 16-cv-438-JPG

Criminal No 14-cr-40072-JPG

MEMORANDUM AND ORDER

This matter comes before the Court following the Court's September 13, 2016, denial of petitioner Dennis A. Higgins' motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 (Docs. 2 & 3). In that order, the Court neglected to address the question of whether a certificate of appealability should issue. Pursuant to Rule 11(a) of the Rules Governing § 2255 Proceedings and Rule 22(b)(1) of the Federal Rules of Appellate Procedure, the Court considers whether to issue a certificate of appealability of that final order adverse to the petitioner.

A § 2255 petitioner may not proceed on appeal without a certificate of appealability. 28 U.S.C. § 2253(c)(1); *see Ouska v. Cahill-Masching*, 246 F.3d 1036, 1045 (7th Cir. 2001). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Tennard v. Dretke*, 542 U.S. 274, 282 (2004); *Ouska*, 246 F.3d at 1045. To make such a showing, the petitioner must "demonstrate that reasonable jurists could debate whether [the] challenge in [the] habeas petition should have been resolved in a different manner or that the issue presented was adequate to deserve encouragement to proceed further." *Ouska*, 246 F.3d at 1046; *accord Tennard*, 542 U.S. at 282; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (certificate of appealability should issue if the petitioner demonstrates "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong."). The Court finds for

the reasons set forth in its September 13, 2016, order that Higgins has not made such a showing and, accordingly, **DECLINES** to issue a certificate of appealability.

IT IS SO ORDERED.

DATED: September 15, 2016

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE