

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

DANNY HOWELL,)	
)	
Petitioner,)	
)	
vs.)	CAUSE NO. 1:09-CV-168
)	
SUPERINTENDENT, WABASH)	
VALLEY CORRECTIONAL)	
Facility,)	
)	
Respondent.)	

ORDER

This matter is before the Court on Petitioner Danny Howell's request for a Certificate of Appealability. To obtain a Certificate of Appealability, a petitioner must make "a 'substantial showing of the denial of a federal right.'" *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983) (quoting *Stewart v. Beto*, 454 F.2d 268, 270 n.2 (5th Cir. 1971), *cert. denied*, 406 U.S. 925 (1972)). See also *Stuart v. Gagnon*, 837 F.2d 289 (7th Cir. 1987). The court's discretion on whether to grant or deny a Certificate of Appealability is the best vehicle of separating meritorious from frivolous appeals. *Barefoot v. Estelle*, 463 U.S. at 893. A petitioner is not required to show that he would prevail on the merits, but he must show that the issues presented in his habeas petition are "debatable among jurists of reason; that a court *could* resolve the issues [in a different manner]; or that the questions are 'adequate to deserve encouragement to proceed further.'" *Id.* at 893 n.4 (quoting *Gordon v. Willis*, 516 F.Supp. 911, 913 (N.D.Ga. 1980)). See also *United*

States ex rel. Calhoun v. Pate, 341 F.2d 885 (7th Cir.), cert. denied, 382 U.S. 945 (1965).

This court denied Mr. Howell's petition for writ of habeas corpus because it concluded that the Indiana courts had correctly applied established federal law in adjudicating his ineffective assistance of counsel claims, and did not make an unreasonable determination of the facts in light of the facts contained in the state court record. Nothing in Mr. Howell's petition for certification of appealability casts doubt on that conclusion, and the issue does not present a question that is debatable among jurists of reason. Further, he has not presented an argument adequate to deserve encouragement to proceed further.

For the foregoing reasons, the petitioner's motion for a Certificate of Appealability (DE 28) is **DENIED** pursuant to Rule 22(b), Federal Rules of Appellate Procedure. The court advises the petitioner that pursuant to Fed. R. App. P. 22(b), where the district judge denies a certificate of appealability, the applicant for the writ may then request issuance of the certificate by a circuit judge.

DATED: June 21, 2010

/s/ RUDY LOZANO, Judge
United State District Court