

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

CURTIS L. TRUITT,)	
)	
Petitioner,)	
v.)	No. 1:09-cv-868-WTL-TAB
)	
INDIANA PAROLE BOARD,)	
)	
Respondent.)	

ENTRY

I.

Curtis L. Truitt's ("Truitt") application for certificate of probable cause (dkt 24) shall be treated as a notice of appeal from the final judgment of December 28, 2009, and is construed as a request for a certificate of appealability (COA).

II.

"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). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In *Slack v. McDaniel*, 529 U.S. 473 (2000), the Supreme Court stated:

[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further. In such a circumstance, no appeal would be warranted.

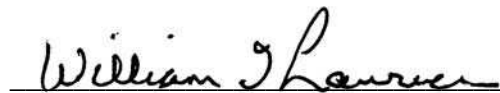
Id. at 484.

In this case, the pleadings and the expanded record showed that Truitt's petition for a writ of habeas corpus was untimely. However, "questions of statutory interpretation, such as whether the petition was timely, do not qualify for a certificate, because they do not concern the Constitution." *West v. Schneider*, 485 F.3d 393, 395 (7th Cir. 2007).

There are no circumstances discernible from the pleadings or the record which satisfy the grounds for issuing a COA. For the reasons which accompanied the dismissal of the petition for a writ of habeas corpus on December 28, 2009, Truitt's petition for the issuance of a certificate of appealability (dkt 24) is **denied**.

IT IS SO ORDERED.

Date: 02/11/2010



Distribution:

Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

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