

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

CIVIL ACTION NO. 5:08-200

DARRYL KEITH BAKER,

PETITIONER,

v.

OPINION AND ORDER

TOM SIMPSON, Warden,

RESPONDENT.

* * * * *

This matter is before the court on the Motion to Vacate Order (DE 32) and several other post-judgment motions filed by the Petitioner.

With his Motion to Vacate, the Petitioner asks the Court to vacate its Judgment dismissing his petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. In the Opinion and Order entered contemporaneously with the Judgment, the Court determined that the Magistrate Judge had correctly determined that the petition for writ of habeas corpus should be dismissed as time barred.

With his Motion to Vacate, the Petitioner does not object to the Court's determination that his § 2254 petition is time barred. Accordingly, the Motion to Vacate will be denied.

The Petitioner has also filed a Motion for Evidentiary Hearing (DE 38). However, in the motion, the Petitioner fails to set forth any reason that an evidentiary hearing is required to determine the issue of whether his petition is time barred. Accordingly, this motion will also be denied.

The Petitioner has also filed a "Motion to Proceed" (DE 36). Again, this motion fails to address the Court's determination that his petition is time barred. Accordingly, it will be denied as moot. Finally, the Petitioner has filed a Motion to Deny Extension of Time (DE 37). The Respondent has not filed a motion for an extension of time and, accordingly, this motion will also be denied as moot.

The Petitioner has also filed a Notice of Appeal of this Court's judgment dismissing his § 2254 petition, thus required this Court to determine whether a Certificate of Appealability should issue. Such a certificate shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The substantial showing threshold is satisfied when a petitioner demonstrates "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Petitioner has made no such showing. Accordingly, a Certificate of Appealability shall not issue.

Pursuant to Federal Rule of Appellate Procedure 22, the Petitioner may now ask the Sixth Circuit Court of Appeals to issue a Certificate of Appealability. However, the Court cautions the Petitioner that the filing of any additional motions in this district court will delay or prohibit the Sixth Circuit from ruling on the Certificate of Appealability issue and from reviewing this Court's judgment.

For all these reasons, the Court hereby ORDERS as follows:

- 1) the Motion to Vacate Order (DE 32) and Motion for Evidentiary Hearing (DE 38) are DENIED;
- 2) the Motion to Proceed (DE 36) and Motion to Deny Extension of Time (DE 37) are DENIED as moot; and
- 3) a Certificate of Appealability SHALL NOT be issued.

Dated this 6th day of April, 2009.



Signed By:

Karen K. Caldwell

A handwritten signature in black ink, appearing to be "K.K.C.", written over the printed name.

United States District Judge