

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

JOHN ROGERS (#110573)

CIVIL ACTION

VERSUS

BURL CAIN, ET AL.

NO. 05-818-JJB-RLB

**RULING**

Before the Court is the petitioner's Application for Certificate of Appealability (R. Doc. 17) and Motion to Proceed In *Forma Pauperis* (R. Doc. 19). The petitioner moves the Court to issue a certificate of appealability from the denial of his Application for Rule 60(b) Motion. See R. Docs. 10, 12, and 14. An appeal may not be taken to the court of appeals from a final order in a habeas corpus proceeding "unless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability may issue only if a habeas petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

In cases where the Court has rejected a petitioner's constitutional claims on substantive grounds, a petitioner must demonstrate 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." *Pippin v. Dretke*, 434 F.3d 782, 787 (5th Cir. 2005), quoting *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In the instant case, the Court finds that reasonable jurists would not debate the denial of petitioner's Application for Rule 60(b) Motion, or the correctness of the substantive ruling. As such, the petitioner's Application (R. Doc. 17) shall be denied. Additionally, pursuant to 28 U.S.C. § 2253(c), inasmuch as the petitioner is not allowed to appeal from the Judgment entered in this case

because of the denial of a certificate of appealability, his motion to proceed in *forma pauperis* on appeal shall also be denied. Accordingly,

**IT IS ORDERED** that the petitioner's Application for Certificate of Appealability (R. Doc. 17) be and is hereby **DENIED**.

**IT IS FURTHER ORDERED** that the petitioner's Motion to Proceed In *Forma Pauperis* (R. Doc. 19) be and is hereby **DENIED**.

**IT IS FURTHER ORDERED** that the petitioner's deficient Motion to Proceed In *Forma Pauperis* (R. Doc. 16) be and is hereby **DENIED AS MOOT**.

Signed in Baton Rouge, Louisiana, on August 23, 2017.



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**JUDGE JAMES J. BRADY  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**