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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

CLARENCE EVERETT

CIVIL ACTION NO. 09-0399

VERSUS

JUDGE ROBERT G. JAMES

WARDEN N. BURL CAIN

MAG. JUDGE KAREN L. HAYES

MEMORANDUM ORDER ON CERTIFICATE OF APPEALABILITY

Pending before the Court is Petitioner's Application for Certificate of Appealability under FED. R. APP. P. 22(b) [Doc. No. 9]. Petitioner seeks to appeal the August 21, 2009 Judgment of this Court adopting Magistrate Judge Hayes's July 15, 2009 Report and Recommendation.

Plaintiff has filed no notice of appeal, but the Court will construe his Application for Certificate of Appealability as his notice of appeal. Under FED. R. APP. P. 4(a)(1) and FED. R. CIV. P. 6(a), the latest date Petitioner's Notice of Appeal could be timely filed was Monday, September 21, 2009. Petitioner's Application for Certificate of Appealability was signed by him on September 23, 2009. Petitioner filed no motion for extension of time. Therefore, Petitioner's Notice of Appeal is untimely, and his Application for Certificate of Appealability is DENIED on this basis.


Additionally, even if his appeal were timely, the Court would deny Petitioner's Application for Certificate of Appealability. Where a district court denies a habeas petition on procedural grounds without reaching the underlying constitutional claim, a certificate of appeal should issue when the prisoner shows that "jurists of reason would find it debatable whether the petition states a valid claim . . . and that jurists of reason would find it debatable whether the

district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Court finds that reasonable jurists could not debate whether the Court was correct in its procedural ruling that Petitioner’s claim was time-barred. Thus, no Certificate of Appealability should issue.

For the forgoing reasons, IT IS HEREBY ORDERED that Petitioner’s Application for Certificate of Appealability is DENIED.

MONROE, LOUISIANA this 6 day of November, 2009.



ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE