

**UNITED STATES DISTRICT COURT**  
**WESTERN DISTRICT OF LOUISIANA**  
**MONROE DIVISION**

**LYNN BESS, III**

**CIVIL ACTION NO. 12-02039**

**VERSUS**

**JUDGE ROBERT G. JAMES**

**LOUISIANA STATE PENITENTIARY**

**MAG. JUDGE KAREN L. HAYES**

**ORDER ON CERTIFICATE OF APPEALABILITY**

Pending before the Court is Petitioner Lynn Bess, III's Petition for Writ of *Habeas Corpus* [Doc. Nos. 1 & 9], filed pursuant to 28 U.S.C. § 2254. No final judgment has issued on that Petition.


On September 6, 2012, Magistrate Judge Karen L. Hayes issued a Memorandum Order [Doc. No. 8] denying Plaintiff's Motion for Reconsideration [Doc. No. 6] of the Order [Doc. No. 5] denying his Motion for Appointment of Counsel [Doc. No. 4]. On October 5, 2012, Petitioner appealed the Magistrate Judge's Order to the undersigned. [Doc. No. 14]. After considering the reasoning in the Magistrate Judge's two Memorandum Orders [Doc. Nos. 5 & 8], and finding the reason was neither clearly erroneous nor contrary to law, on November 5, 2012, the Court denied Petitioner's appeal and affirmed the September 6, 2012 Memorandum Order. [Doc. No. 17]. On November 26, 2012, the Clerk of Court received and docketed Petitioner's Notice of Appeal [Doc. No. 19] of the Court's November 5, 2012 Order.

Since the underlying matter is a *habeas* Petition, Petitioner is required to obtain a Certificate of Appealability, either from this Court or from the United States Court of Appeal for the Fifth Circuit, if he wishes to appeal a final judgment. However, there is no final judgment in

place in this case. Nor has Petitioner made a substantial showing of the denial of a constitutional right. Therefore,

IT IS ORDERED that a Certificate of Appealability [Doc. No. 21] is DENIED.

MONROE, LOUISIANA, this 28 day of November, 2012.

  
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ROBERT G. JAMES  
UNITED STATES DISTRICT JUDGE