

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 08-10605-RWZ

ALEX HOLMES

v.

LUIS S. SPENCER,
Superintendent, MCI - Norfolk,
and MARTHA COAKLEY,
Attorney General for the Commonwealth of Massachusetts

CERTIFICATE OF APPEALABILITY

November 30, 2009

ZOBEL, D.J.

Petitioner pled guilty to second degree murder in 1998 and was sentenced to imprisonment for life. He seeks habeas relief on several grounds but including most importantly the claim that his counsel provided constitutionally flawed assistance by advising him that he could seek a reduction of sentence later by means of a motion to revise and revoke sentence. I allowed a motion to dismiss on timeliness grounds. Petitioner has appealed and seeks a certificate of appealability.

One issue is whether the statutory impossibility of the revise and revoke mechanism should be decisive given that counsel's advice was tied to the possibility of a reduction of sentence on the district attorney's motion based on defendant's cooperation. No such request for assistance was ever made by the district attorney.

The second issue pertains to petitioner's other grounds which I did not reach as I decided timeliness is governed on the basis of the application, not each separate

ground contained therein.

Reasonable judges may take different positions on these issues. I therefore allow the request for a certificate of appealability with respect to both.

November 30, 2009

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE