

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RAHIM SALAAM, #259238,

Petitioner,

Case No: 04-CV-70675

Honorable John Corbett O'Meara

Magistrate Judge Mona K. Majzoub

v.

DAVID GUNDY,

Respondent.

**OPINION & ORDER DENYING PETITIONER'S MOTION FOR
CERTIFICATE OF APPEALABILITY AND MOTION
TO PROCEED *IN FORMA PAUPERIS***

Petitioner filed a habeas petition pursuant to 28 U.S.C. §2254. On March 29, 2007, the Court denied relief. Petitioner filed a notice of appeal on September 12, 2008. Pending before the Court are Petitioner's "Motion for Certificate of Appealability" and "Motion for Leave to Proceed *In Forma Pauperis*." On December 9, 2008, the United States Court of Appeals for the Sixth Circuit entered an order dismissing Petitioner's appeal pursuant to Fed. R. App. P. 4(a) and Fed. R. App. P. 26(a). *Salaam v. Gundy*, 08-2186, (Dec. 9, 2008). The Sixth Circuit determined that Petitioner's notice of appeal was untimely, and no motion for an extension of time or to reopen the appeal period had been filed pursuant to Fed. R. App. P. 4(a)(5) and Fed. R. App. P. 4(a)(6), respectively. *Id.*

The purpose of the Court rendering a decision on Petitioner's motions is to assist in guiding the Sixth Circuit in its determination regarding how Petitioner's appeal should proceed under its jurisdiction. See 28 U.S.C. §2253(c)(2); *Miller-El v. Cockrell*, 53 U.S. 322, 327 (2003). A certificate of appealability may issue "only if the applicant has made a substantial showing of the

denial of [a] constitutional right.” 28 U.S.C. §2253(c)(2). Since the Sixth Circuit has dismissed Petitioner’s appeal, a decision by this Court on Petitioner’s motions would be pointless.¹

Accordingly,

IT IS ORDERED that Petitioner’s “Motion for Certificate of Appealability” [Dkt. #33] is **DENIED** as MOOT.

IT IS FURTHER ORDERED that Petitioner’s “Motion for Leave to Proceed *In Forma Pauperis*” [Dkt. #34] is **DENIED** as MOOT.

s/John Corbett O’Meara
United States District Judge

Date: January 13, 2009

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, January 13, 2009, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager

¹The Petitioner filed pleadings with the Sixth Circuit raising the same arguments raised in the motions presently before the Court. The Sixth Circuit reviewed them and found them unpersuasive as support for allowing his appeal to proceed on the merits. *Salaam v. Gundy*, 08-2186 (Dec. 9, 2008).