

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

DANIEL WASHINGTON,

Petitioner,

v.

CASE NO. 06-10975
HONORABLE DENISE PAGE HOOD

THOMAS M. BIRKETT,

Respondent.

_____ /

ORDER RE: CERTIFICATE OF APPEALABILITY

On July 23, 2008, this Court issued a Judgment and Memorandum Opinion and Order denying and dismissing Petitioner's Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254. On September 9, 2008, Petitioner filed a Notice of Appeal, along with a Motion for Certificate of Appealability and an Application to Proceed *In Forma Pauperis* on Appeal.¹

Before Petitioner may appeal this Court's dispositive decision denying his petition, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b). The Court must either issue a certificate of appealability indicating which issues satisfy the required showing

¹ This Court deems Petitioner's Notice of Appeal and Motion for Certificate of Appealability to be timely filed pursuant to the Federal Rules of Appellate Procedure. Federal Rule of Appellate Procedure 4(a)(1)(A) requires that the notice of appeal be filed with the district court within thirty (30) days from the date of the final order or judgment dismissing the petitioner's habeas petition. *See* Fed. R. App. P. 4(a)(1)(A). However, a *pro se* prisoner's notice of appeal is considered "timely if it is deposited in the institution's internal mail system on or before the last day for filing." Fed. R. App. P. 4(c)(1); *see also, Houston v. Lack*, 487 U.S. 266, 276 (1988). Petitioner's Motion for Certificate of Appealability and Notice of Appeal are dated August 18, 2008.

or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3)(B); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F. 3d 1306, 1307 (6th Cir. 1997). A certificate of appealability may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The substantial showing threshold is satisfied when a petitioner demonstrates “that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Petitioner seeks a Certificate of Appealability on each of the claims raised in his habeas petition: (I) Petitioner was denied his Sixth Amendment right to the effective assistance of trial counsel because his attorney did not interview or subpoena witnesses; (II) Petitioner was denied his Fourteenth Amendment right to a fair trial where the prosecutor failed to list all known *res gestae* witnesses; (III) Petitioner was denied his Fifth and Fourteenth Amendment rights where the court’s failure to suppress his statements given without warnings required under *Miranda v. Arizona*; (IV) Petitioner is entitled to a new trial due to the cumulative errors which denied him a fair trial under the Fourteenth Amendment.

After reviewing this Court’s Memorandum Opinion and Order, and Petitioner’s Notice of Appeal, Motion for Certificate of Appealability and Motion for Leave to Proceed *In Forma Pauperis*, the Court finds that Petitioner has not shown either by his Motion for Certificate of Appealability and Brief in Support, nor by his underlying habeas corpus petition that the Court’s findings and conclusions of law are debatable among jurists and that the issues raised in the petition deserve further proceedings.

Accordingly,

IT IS ORDERED that a Certificate of Appealability NOT issue in this case.

IT IS FURTHER ORDERED that the Motion for Certificate of Appealability (**Docket No. 29, filed September 8, 2008**) is DENIED.

IT IS FURTHER ORDERED that the Application to Proceed *In Forma Pauperis* on Appeal (**Docket No. 27, filed September 8, 2008**) is DENIED.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: October 29, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record and **Daniel Washington**, #361350, Camp Lehman, 5135 Hartwick Pines Road, Grayling, MI 49738 on October 29, 2008, by electronic and/or ordinary mail.

S/Lisa Ware for William F. Lewis
Case Manager