

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT SIMPSON,

Petitioner,

Case No. 08-11390

Honorable David M. Lawson

v.

THOMAS BIRKETT,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

The petitioner, Robert Simpson, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 that the Court denied as untimely on July 13, 2011. The Court will now consider whether to issue a certificate of appealability.

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). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). To receive a certificate of appealability, “a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotes and citations omitted).

The petitioner sought habeas relief on the grounds that he was denied his Sixth Amendment right to the effective assistance of appellate counsel where his appellate counsel neglected to argue the following two claims during his appeal of right: (1) trial counsel was ineffective in failing to

argue that the petitioner's statement was the product of an illegal detention following an arrest unsupported by probable cause and (2) trial counsel was ineffective in failing to advance an alternative theory where the evidence supported a conviction on a lesser included offense. The Court found that the performance of the petitioner's appellate counsel fell well within the range of professionally competent assistance and noted that the petitioner's underlying ineffective-assistance-of-trial-counsel arguments were meritless. The Court now finds that reasonable jurists could not debate that this Court correctly dismissed the petitioner's claims. Therefore, the Court will deny the petitioner a certificate of appealability.

Accordingly, it is **ORDERED** that the certificate of appealability is **DENIED**.

s/David M. Lawson _____
DAVID M. LAWSON
United States District Judge

Dated: July 13, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 13, 2011.

s/Deborah R. Tofil _____
DEBORAH R. TOFIL