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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

DUANE ALLEN MI	LLS,	
	Petitioner,	
v. BLAINE LAFLER,		CASE NO. 08-14778 HONORABLE DENISE PAGE HOOD
	Respondent.	

ORDER DENYING PETITIONER'S MOTION FOR A CERTIFICATE OF APPEALABILITY AND FOR APPOINTMENT OF COUNSEL, BUT GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL

Petitioner Duane Allen Mills has appealed the Court's denial of his habeas corpus petition. Pending before the Court are Petitioner's motions for a certificate of appealability, for leave to proceed *in forma pauperis* on appeal, and for appointment of appellate counsel.

"[A] prisoner seeking postconviction relief under 28 U.S.C. § 2254 has no automatic right to appeal a district court's denial or dismissal of the petition. Instead, [the] petitioner must first seek and obtain a [certificate of appealability.]" *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 1034, 154 L. Ed. 2d 931 (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).

The Court concluded in its dispositive opinion that the trial court did not deprive Petitioner of retained counsel of choice or effective assistance of counsel and that the prosecutor's conduct was either proper or not so egregious as to render the trial

fundamentally unfair. The Court also concluded that Petitioner's trial attorney was not

ineffective, that Petitioner's sentencing claims did not warrant habeas relief, and that

Petitioner's appellate attorney was not ineffective for failing to raise all of Petitioner's

habeas claims on direct review.

Reasonable jurists would not find the Court's assessment of Petitioner's claims

debatable or wrong, nor conclude that Petitioner's claims deserve encouragement to

proceed further. Slack v. McDaniel, 529 U.S. 473, 483-84, 120 S. Ct. 1595, 1603-04, 146

L. Ed. 2d 542 (2000). Consequently, Petitioner's motion for a certificate of appealability

[Docket No. #24, filed July 25, 2011] and his motion for appointment of counsel [Docket No.

25, filed July 25, 2011] are **DENIED**. The motion to proceed in forma pauperis on appeal

[Docket No. 23, filed July 25, 2011] is **GRANTED**, because the issues are not frivolous, and

an appeal could be taken in good faith. 28 U.S.C. § 1915(a)(3).

s/Denise Page Hood

United States District Judge

Dated: August 9, 2011

I hereby certify that a copy of the foregoing document was served upon Duane Mills #507328, 10274 Boyer Road, Carson City, MI 48811 and counsel of record on August 9,

2011, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry

Case Manager

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