

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIAN BOYKINS,

Petitioner,

v.

ROBERT NAPEL,

Respondent,

Civil No. 2:13-CV-12768

HONORABLE SEAN F. COX

UNITED STATES DISTRICT JUDGE

**OPINION AND ORDER DENYING THE MOTION FOR
RECONSIDERATION [DKT. # 33], AND DENYING A CERTIFICATE OF
APPEALABILITY OR LEAVE TO APPEAL *IN FORMA PAUPERIS***

This Court denied the petition for writ of habeas corpus that had been filed by petitioner pursuant to 28 U.S.C. § 2254, declined to issue a certificate of appealability, and denied petitioner leave to appeal *in forma pauperis*. *Boykins v. Napel*, No. 2:13-CV-12768, 2017 WL 4778704 (E.D. Mich. Oct. 23, 2017).

Petitioner has filed a motion for reconsideration, which is DENIED.

E.D. Mich. LR 7.1(h) governs motions for reconsideration. Under that rule, “[t]he movant must not only demonstrate a palpable defect by which the court and the parties . . . have been misled but also show that correcting the defect will result in a different disposition of the case.” E.D. Mich. LR 7.1(h). “[T]he court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication.” *Id.*

In his motion for reconsideration, petitioner advances a number of arguments in support of his claims that he was denied the effective assistance of counsel. The Court, however, considered and rejected all of these arguments when it denied the petition. Petitioner’s motion for

reconsideration will be denied, because petitioner is merely presenting issues which were already ruled upon by this Court, either expressly or by reasonable implication, when the Court denied petitioner's habeas application and declined to issue a certificate of appealability or leave to appeal *in forma pauperis*. See *Hence v. Smith*, 49 F. Supp. 2d 547, 553 (E.D. Mich. 1999).

A certificate of appealability is required to appeal the denial of a motion for reconsideration in a habeas case. See e.g. *Amr v. U.S.*, 280 F. App'x. 480, 486 (6th Cir. 2008). This Court will deny petitioner a certificate of appealability, because jurists of reason would not find this Court's resolution of petitioner's motion for reconsideration to be debatable. The Court further concludes that petitioner should not be granted leave to proceed *in forma pauperis* on appeal, as any appeal would be frivolous. See Fed.R.App. P. 24(a).

IT IS HEREBY ORDERED that

- (1) The motion for reconsideration [Dkt. # 33] is **DENIED**.
- (2) A certificate of appealability is **DENIED**.
- (3) Petitioner is **DENIED** Leave to Appeal *In Forma Pauperis*.

Dated: January 12, 2018

s/Sean F. Cox
Sean F. Cox
U. S. District Judge

I hereby certify that on January 12, 2018, the foregoing document was served on counsel of record via electronic means and upon Brian Boykins via First Class mail at the address below:

Brian Boykins 187252
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s/J. McCoy
Case Manager