

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OMAR RASHAD POUNCY,

Petitioner,

Case No. 13-cv-14695
Hon. Matthew F. Leitman

v.

CARMEN D. PALMER,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

By order dated September 11, 2017 (ECF #147), this Court denied Petitioner Omar Rashad Pouncy's FRCP 60(b) Motion (ECF #139). In the motion, Pouncy asked this Court, among other things, to issue a certificate of appealability in the event that it denied relief. The Court inadvertently failed to address that request in its prior order and does so now.

The United States District Court for the Northern District of Ohio recently set forth the law concerning certificates of appealability in the context of a Rule 60(b) motion by a habeas petitioner:

A certificate of appealability is also a prerequisite for a habeas petitioner's appeal of the denial of a Rule 60(b) motion. *United States v. Hardin*, 481 F.3d 924, 926 (6th Cir. 2007).

A certificate of appealability shall issue "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). If the district court denied the habeas petition on the merits,

then the applicant must show that “reasonable jurists could debate whether” it “should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted). If the district court denied the petition on procedural grounds without reaching the petitioner's underlying constitutional claim, a certificate of appealability should issue when the applicant shows that jurists of reason would find debatable (1) whether the petition states a valid claim of the denial of a constitutional right and (2) whether the district court was correct in its procedural ruling. *Id.*

West v. LaRose, 2017 WL 2226687 at **1-2 (N.D. Ohio 2017).

Applying these standards, the Court declines to grant a certificate of appealability from its order dated September 11, 2017. As the Court attempted to make clear in that order, the Court did not believe that there was any arguable basis for the relief requested. In the motion denied by the Court, Pouncy did not make a substantial showing of the denial of a constitutional right. Moreover, the Court concludes that reasonable jurists could not debate whether the motion should have been resolved in a different manner or that the issues presented deserve encouragement to proceed further. Simply put, the Court sees no basis for an appeal from its order.

Accordingly, the Court DENIES Pouncy's request for a certificate of appealability.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: September 13, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 13, 2017, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
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