

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

JIMMIE EARL MCCASKILL,

Petitioner,

Civil No. 2:16-CV-11352

HONORABLE VICTORIA A. ROBERTS

v.

UNITED STATES DISTRICT JUDGE

RANDALL HAAS,

Respondent.

**OPINION AND ORDER DENYING THE MOTION FOR RECONSIDERATION
AND DIRECTING THE CLERK OF THE COURT TO TRANSFER THE
MOTION FOR A CERTIFICATE OF APPEALABILITY [Dkt. # 13] TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

This Court denied Petitioner's application for a writ of habeas corpus, declined to issue a certificate of appealability, but granted him leave to appeal *in forma pauperis*. *McCaskill v. Haas*, No. 2:16-CV-11352, 2017 WL 131555 (E.D. Mich. Jan. 13, 2017).

Petitioner filed a motion for a certificate of appealability. Petitioner also filed a Notice of Appeal with the United States Court of Appeals for the Sixth Circuit.¹ The Court construes the motion as a motion for reconsideration of the Court's decision to deny Petitioner a certificate of appealability.

The Court denies Petitioner's motion for reconsideration. The Court orders that Petitioner's motion for a certificate of appealability be transferred to the United States Court of Appeals for the Sixth Circuit.

¹ Dkt. # 14.

U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (h) allows a party to file a motion for reconsideration. However, a motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *Michigan Regional Council of Carpenters v. Holcroft L.L.C.* 195 F. Supp. 2d 908, 911 (E.D. Mich. 2002)(citing to U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (g)(3)). A motion for reconsideration should be granted if the movant demonstrates a palpable defect by which the court and the parties have been misled and that a different disposition of the case must result from a correction thereof. *Id.* A palpable defect is a defect that is obvious, clear, unmistakable, manifest, or plain. *Witzke v. Hiller*, 972 F. Supp. 426, 427 (E.D. Mich. 1997). The Court construes Petitioner's motion for a certificate of appealability in part as a motion for reconsideration of the Court's prior order to deny a certificate of appealability. *See e.g. Jackson v. Crosby*, 437 F.3d 1290, 1294, n. 5 (11th Cir. 2006).

Petitioner is merely presenting issues which were already ruled upon by this Court, either expressly or by reasonable implication, when the Court denied the petition for writ of habeas corpus and declined to issue a certificate of appealability. *See Hence v. Smith*, 49 F. Supp. 2d 547, 553 (E.D. Mich. 1999).

The proper procedure when a district court denies a certificate of appealability is for the petitioner to file a motion for a certificate of appealability before the appellate court in the appeal from the judgment denying the petition for writ of habeas corpus or the motion to vacate sentence. *See Sims v. U.S.*, 244 F.3d 509 (6th Cir. 2001)(citing Fed.

R.App. P. 22(b)(1)). The Court, in the interests of justice, orders that Petitioner's motion for a certificate of appealability be transferred to the United States Court of Appeals for the Sixth Circuit.

IT IS ORDERED that:

(1). The motion for reconsideration is DENIED.

(2) the Clerk of the Court shall transfer the "Motion for Certificate of Appealability" [Dkt. # 13] to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

Dated: February 28, 2017

S/Victoria A. Roberts
HON. VICTORIA A. ROBERTS
UNITED STATES DISTRICT JUDGE