

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

STEVEN A. JOHNSON, # 44964-039

Petitioner,

Civil No. 2:16-CV-13215
HONORABLE ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

v.

STATE OF MICHIGAN,

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. # 9] TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Petitioner filed a petition for writ of habeas corpus, challenging his conviction for carrying a concealed weapon. On October 4, 2016, this Court summarily dismissed without prejudice the petition for writ of habeas corpus, declined to issue a certificate of appealability, but granted petitioner leave to appeal *in forma pauperis*. *Johnson v. Michigan*, No. 2:16-CV-13215, 2016 WL 5791453 (E.D. Mich. Oct. 4, 2016).

Petitioner has now filed a notice of appeal with the United States Court of Appeals for the Sixth Circuit. Petitioner has also filed a motion for a certificate of appealability, which this Court will treat in part as a motion for reconsideration of the Court's prior decision to deny petitioner a certificate of appealability. For the reasons that follow, the Court will deny petitioner's motion for reconsideration.

The Court will further order that petitioner's motion for a certificate of appealability be transferred to the United States Court of Appeals for the Sixth Circuit.

Because this Court previously denied petitioner a certificate of appealability when it denied the petition for writ of habeas corpus, the Court will initially construe petitioner's motion for a certificate of appealability as a motion for reconsideration of the Court's prior order to deny a certificate of appealability in this case. See e.g. *Jackson v. Crosby*, 437 F. 3d 1290, 1294, n. 5 (11th Cir. 2006).

U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (h) allows a party to file a motion for reconsideration. 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. *Ward v. Wolfenbarger*, 340 F. Supp. 2d 773, 774 (E.D. Mich. 2004)(citing L.R. 7.1(g)(3)). A motion for reconsideration which merely presents "the same issues ruled upon by the Court, either expressly or by reasonable implication," shall be denied. *Id.*

In his motion for a certificate of appealability, petitioner advances the same arguments that he made in his initial petition for writ of habeas corpus and which were considered and addressed by this Court when the Court summarily dismissed the petition for writ of habeas corpus and declined to grant petitioner a certificate of appealability. Petitioner's request for reconsideration will therefore

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 summarily dismissed 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).

This Court further notes that 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)). In light of the fact that this Court has already denied petitioner a certificate of appealability, petitioner should direct his request for a certificate of appealability to the Sixth Circuit. The Court, in the interests of justice, will order that petitioner's motion for a certificate of appealability to be transferred to the United States Court of Appeals for the Sixth Circuit.

ORDER

IT IS HEREBY ORDERED that petitioner's request for reconsideration of the Court's previous denial of a certificate of appealability is **DENIED**.

Johnson v. State of Michigan, U.S.D.C. No. 2:16-CV-13215

IT IS FURTHER ORDERED that the Clerk of the Court transfer petitioner's "Motion for A Certificate of Appealability" [Dkt. # 9] to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

Dated: October 25, 2016

s/Arthur J. Tarnow
HONORABLE ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE