

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEONARR T. MOORE,

Petitioner,

v.

CASE NO. 5:11-cv-14319
HONORABLE JOHN CORBETT O'MEARA

WILLIE O. SMITH,

Respondent.

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**ORDER DENYING PETITIONER'S MOTION
FOR A CERTIFICATE OF APPEALABILITY
AND APPLICATION TO PROCEED
IN FORMA PAUPERIS ON APPEAL**

Petitioner Leonarr T. Moore has appealed the Court's order dismissing his habeas corpus petition. Currently pending before this Court are Petitioner's motion for a certificate of appealability and his application to proceed *in forma pauperis* on appeal.

"[A] prisoner seeking post-conviction 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 (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).

Petitioner alleged in his habeas petition that he was convicted on the basis of evidence obtained through an unconstitutional search and seizure. The Court summarily dismissed the petition because Fourth Amendment claims are not cognizable

on habeas corpus review if the petitioner had a full and fair opportunity to litigate the claim in state court. *Stone v. Powell*, 428 U.S. 465, 482 (1976). Petitioner had a full and fair opportunity to raise his claim in the trial court, in the Michigan Court of Appeals, and in the Michigan Supreme Court. Consequently, reasonable jurists would not “find it debatable whether the petition states a valid claim of the denial of a constitutional right” or whether this Court’s procedural ruling was correct. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Petitioner’s motion for a certificate of appealability [dkt. #5] is **DENIED**. The application to proceed *in forma pauperis* on appeal [dkt. #8] likewise is **DENIED**, as an appeal could not be taken in good faith. 28 U.S.C. § 1915(a)(3).

s/John Corbett O’Meara
United States District Judge

Date: March 2, 2012

I hereby certify that a copy of the foregoing document was served upon Petitioner on this date, March 2, 2012, by first-class U.S. mail.

s/William Barkholz
Case Manager