

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

VICTOR M. KERN,

Petitioner,

v.

AMENDED ORDER

Civil File No. 10-845 (MJD/JSM)

STATE OF MINNESOTA,
Seventh Judicial District,

Respondent.

Victor M. Kern, pro se.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Janie S. Mayeron dated April 2, 2010. [Docket No. 3] Petitioner Victor M. Kern filed objections to the Report and Recommendation.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Janie S. Mayeron dated April 2, 2010.

An applicant for a writ of habeas corpus may not take an appeal unless a judge issues a certificate of appealability under 28 U.S.C. § 2253(c). The Court will grant a certificate of appealability only where the petitioner has made a substantial showing of the denial of a constitutional right. See id.; Tiedeman v. Benson, 122 F.3d 518, 523 (8th Cir.1997). To meet this burden, the petitioner must show “that the issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings.” Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994) (citation omitted).

When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Slack v. McDaniel, 529 U.S. 473, 484 (2000).

The Court held that Petitioner’s § 2254 motion was procedurally defaulted. The Court concludes that reasonable jurists would not find the procedural issues raised in Petitioner’s § 2254 motion debatable, or that some other court would decide this § 2254 motion differently. The Court therefore declines to grant a certificate of appealability.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

HEREBY ORDERED that:

1. The Court **ADOPTS** the Magistrate Judge's Report and Recommendation dated April 2, 2010 [Docket No. 3].
2. Petitioner's application for a writ of habeas corpus [Docket No. 1] is **DENIED**.
3. A certificate of appealability shall not issue.
4. This action is **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 21, 2010

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court