

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

RICARDO MORALES, )  
Petitioner, )  
v. ) Case No. 4:14-CV-943 NAB  
JAY CASSADY, )  
Respondent. )

**MEMORANDUM AND ORDER**

This closed matter is before the Court on Petitioner Ricardo Morales' Application for Certificate of Appealability [Doc. 13.] and Motion to Proceed in forma pauperis [Doc. 14.]. The Court will grant Petitioner's motion for leave to proceed in forma pauperis on appeal. [Doc. 14.] The Court has previously stated that it will not issue a certificate of appealability on Petitioner's convictions for statutory sodomy in Counts I, VIII, X, and XIII for the reasons stated in the Memorandum and Order of September 27, 2017. [Doc. 10.]

Petitioner's understanding of the standard of review is not correct. On habeas review, the district court is limited to deciding whether a claim that was adjudicated on the merits in state court proceedings (1) resulted in a decision that is contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court, or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C. § 2254(d). The standard of review does not allow this Court to re-try Petitioner's case.

Petitioner contends that this Court did not read the trial transcript, failed to read the indictment, failed to apply the statutory case law in effect at the time of the conviction, did not

examine the record as to each count and apply the facts to each count at each location, and failed to address additional concerns raised for the first time in the motion for certificate of appealability. The Court carefully examined the sole issue on habeas review as presented by Petitioner- whether the trial court erred in denying his motion for acquittal, because the State did not present sufficient evidence of penetration of the victim's sexual organ upon which a reasonable jury could have found him guilty beyond a reasonable doubt of statutory sodomy in Counts I, VIII, X, and XIII. The new claims that Petitioner is asserting in the instant motion were not before the Court.

The Court reviewed the entire record in this case and found that habeas relief was not warranted, because Petitioner made no showing of denial of a constitutional right. [Docs. 10, 11.] "It is not the province of a federal habeas court to reexamine state court determinations on state law questions." *Estelle v. McGuire*, 502 U.S. 62, 67 (1991). Therefore, the Court will deny Petitioner's Application for Certificate of Appealability.

Accordingly,

**IT IS HEREBY ORDERED** that Petitioner's Application for Certificate of Appealability is **DENIED**. [Doc. 13.]

**IT IS FURTHER ORDERED** that Petitioner's Motion for Leave to Proceed In Forma Pauperis on Appeal is **GRANTED**. [Doc. 14.]

Dated this 27th day of October, 2017.

/s/ Nannette A. Baker  
NANNETTE A. BAKER  
UNITED STATES MAGISTRATE JUDGE