

A certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. See [28 U.S.C. § 2253\(c\)\(2\)](#). Such a showing requires a demonstration “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” [Slack v. McDaniel, 529 U.S. 473, 484 \(2000\)](#) (internal quotation marks omitted), citing [Barefoot v. Estelle, 463 U.S. 894 \(1983\)](#) (defining pre-AEDPA standard for a certificate of probable cause to appeal).

Petitioner has not filed a motion for a certificate of appealability or a brief in support. (See Docket Sheet.) Thus, this matter cannot proceed on appeal until the question of the certificate of appealability is considered. In addition, Petitioner has not paid the appellate filing fee or submitted a motion for leave to appeal in forma pauperis. (Filing No. [23](#).)

IT IS THEREFORE ORDERED that:

1. Petitioner shall have until June 7, 2010, to file a motion for certificate of appealability and brief in support;
2. In the event that Petitioner fails to file a motion and brief as set forth in this Memorandum and Order, the court will deny the issuance of a certificate of appealability without further notice;
3. Petitioner shall have until June 7, 2010, to file a motion for leave to proceed in forma pauperis on appeal. The Clerk of the court is directed to send to Petitioner the Form AO240, Application to Proceed Without Prepayment of Fees and Affidavit; and

appealability or state the reasons why such a certificate should not issue. See generally [Tiedeman v. Benson, 122 F.3d 518, 521 \(8th Cir. 1997\)](#).

4. The Clerk of the court is directed to set a pro se case management in this case with the following text: June 7, 2010: check for filing of motion for certificate of appealability and motion to proceed IFP on appeal.

DATED this 7th day of May, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

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