

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RICHARD A. GRISWOLD,)	
)	
Petitioner,)	8:10CV55
)	
v.)	
)	
TECUMSEH STATE CORRECTIONAL)	MEMORANDUM AND ORDER
INSTITUTION,)	
)	
Respondent.)	
_____)	

On September 1, 2010, the Court dismissed petitioner's habeas corpus claims with prejudice and entered judgment against him (Filing Nos. [34](#) and [35](#)). On September 8, 2010, petitioner filed a timely Notice of Appeal of the Court's judgment (Filing No. [39](#)).

Before petitioner may appeal the dismissal of his petition for writ of habeas corpus, a "Certificate of Appealability" must issue. Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), the right to appeal such a dismissal is governed by [28 U.S.C. § 2253\(c\)](#), which states:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from

—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court;

. . . .

- (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
- (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph(2).¹

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).

¹ Similarly, [Federal Rule of Appellate Procedure 22\(b\)](#), as amended by the AEDPA, indicates that in an action pursuant to [28 U.S.C. § 2254](#), a notice of appeal triggers the requirement that the district judge who rendered the judgment either issue a certificate of appealability or state the reasons why such a certificate should not issue. See generally [Tiedeman v. Benson, 122 F.3d 518, 521 \(8th Cir. 1997\)](#).

Petitioner has filed a motion for a certificate of probable cause, which the Court liberally construes as a motion for certificate of appealability (Filing No. [39](#)). However, petitioner did not file a brief in support of his motion. (See Docket Sheet.) This matter cannot proceed on appeal until the question of the certificate of appealability is considered.

IT IS ORDERED:

1. Petitioner shall have until October 13, 2010, to file a brief in support of his motion for certificate of appealability.

2. In the event that petitioner fails to file a brief, as set forth in this memorandum and order, the Court will deny the issuance of a certificate of appealability without further notice.

3. The clerk of the court is directed to set a pro se case management deadline in this case with the following text: October 13, 2010: check for filing of brief in support of the motion for certificate of appealability.

DATED this 15th day of September, 2010.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court

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