

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

BILLY TYLER,)	
)	
Petitioner,)	8:11CV103
)	
v.)	
)	
HUBER and DOUGLAS COUNTY)	MEMORANDUM AND ORDER
DISTRICT COURT,)	
)	
Respondents.)	
_____)	

On July 18, 2011, the Court dismissed petitioner's habeas corpus claims and entered judgment against him (Filing Nos. [8](#) and [9](#)). On July 21, 2011, petitioner filed a Notice of Appeal (Filing No. [10](#)).

However, 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).

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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,

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 \(8th Cir. 1997\)](#).

this matter cannot proceed on appeal until the question of the certificate of appealability is considered. Accordingly,

IT IS ORDERED:

1. Petitioner shall have until August 22, 2011, 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. The clerk of the court is directed to set a pro se case management in this case with the following text: August 22, 2011: check for filing of motion for certificate of appealability.

DATED this 25th day of July, 2011.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court

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