

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
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RAOUL SOUTH,

Petitioner,

- against -

WILLIAM LEE,

Respondent.
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13-CV-07261
(TPG)

MEMORANDUM OPINION
& ORDER

On October 25, 2017, this court issued an Opinion denying Petitioner Raoul South’s petition for habeas corpus. ECF No. 33. On October 30, 2017, the Clerk of Court entered judgment against South. ECF No. 34. Subsequently, on November 21, 2017, South filed a notice of appeal from this court’s October 25 Opinion. For the following reasons, the court holds that no certificate of appealability shall issue, and that any appeal from the Opinion would not be taken in good faith.

When a petitioner challenging a state court sentence seeks appeal from an opinion denying habeas relief, the right to appeal is governed by 28 U.S.C. § 2253(c). Under this section, an “appeal may not be taken to the court of appeals from . . . the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court” without a certificate

of appealability. 28 U.S.C. § 2253(c)(1)(A); *see also Slack v. McDaniel*, 529 U.S. 473, 478, 480-81 (2000).

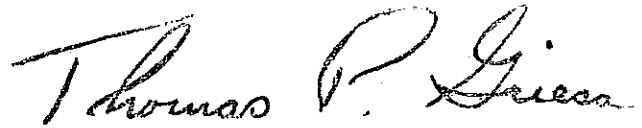
When a district court has made a determination on the merits, a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make a substantial showing, a petitioner must “sho[w] that reasonable jurists 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.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotations omitted) (quoting *Slack*, 529 U.S. at 484); *see also Slack*, 529 U.S. at 484 (“Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.”).

The court finds that the claims South raises in his habeas petition are meritless, and accordingly, holds that no certificate of appealability shall issue because he has failed to make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Further, the court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from its Opinion would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that

an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED

Dated: New York, New York
November 29, 2017

Handwritten signature of Thomas P. Griesa in cursive script.

Thomas P. Griesa
U.S. District Judge