

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL NO. 1:05CV55

TERRY ALVIN HYATT,)
)
Petitioner,)
)
Vs.)
)
GERALD BRANKER, Central Prison,)
Raleigh, North Carolina,)
)
Respondent.)
_____)

MEMORANDUM
AND ORDER

THIS MATTER is before the Court on Terry Alvin Hyatt’s motion for a certificate of appealability pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22. **Motion for Certificate of Appealability, filed November 26, 2008.** Hyatt seeks to appeal the Court’s denial of Claims I, II, III, IV, V, VI, IX, XII, and XIII of his petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254.

This Court may issue a certificate of appealability (hereinafter “COA”) only if Hyatt has made a “substantial showing of the denial of a constitutional right.” **28 U.S.C. § 2253(c)(2).** As the United States Supreme Court has stated, “[w]here 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.” ***Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).**

However, when a district court denies a claim on procedural grounds,

a COA should issue when the petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

***Slack*, 529 U.S. at 484.**

It is this Court's view that reasonable jurists would find the Court's assessment of the constitutional issues raised in Claims I, II, III, IV, XII, and XIII of Hyatt's habeas petition “debatable or wrong.” ***See Miller-El*, 537 U.S. at 338.** Furthermore, it is this Court's view that jurists of reason would find it debatable whether Claims V, VI and IX state a valid constitutional claim and could debate whether this Court was correct in denying those claims on procedural grounds. ***See Slack*, 529 U.S. at 484.**

IT IS, THEREFORE, ORDERED that Hyatt's motion for a certificate of appealability is hereby **GRANTED**.

Signed: December 16, 2008

A handwritten signature in black ink, appearing to read "Lacy H. Thornburg", written over a horizontal line.

Lacy H. Thornburg
United States District Judge

