

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL NO. 5:09CV89-03-MU

MED TOM SAYAVONG,)
Petitioner,)
)
v.)
)
NEAL VAUGHN,)
Respondent.)
_____)

ORDER

THIS MATTER is before the Court on the Petitioner’s Application for a Certificate of Appealability, originally filed in the Fourth Circuit Court of Appeals on October 30, 2009 and transferred to this Court for disposition on December 17, 2009 (Doc. No. 11.).

On January 11, 2000, Petitioner was convicted, after trial by jury, of trafficking in MDMA by possession, trafficking in MDMA by delivery, trafficking in MDMA by transportation, conspiracy to traffic in MDMA, and carrying a concealed weapon. Petitioner was sentenced to two consecutive mandatory terms of 35-42 months imprisonment.

Petitioner appealed and on July 1, 2008, the North Carolina Court of Appeals issued an unpublished opinion finding no error. The Supreme Court of North Carolina denied certiorari on December 11, 2008.

On February 23, 2009, Petitioner filed a motion for appropriate relief (MAR) in the Superior Court of Catawba County. On March 3, 2009, the Honorable Timothy S. Kincaid summarily denied the MAR. On June 23, 2009, Petitioner filed a certiorari petition in the North Carolina Court of Appeals, which was denied on July 8, 2009.

On July 27, 2009, Petitioner filed a Petition for Writ of Habeas Corpus in this Court alleging that his trial counsel was ineffective for failing to object to the jury instructions on the conspiracy offense and therefore failed to preserve this issue for appeal; and his appellate counsel was ineffective in failing to argue in his brief that the trial court's jury instruction on the conspiracy charge amounted to plain error. In an eight- page Order dated October 1, 2009 this Court considered and denied Petitioner's claims on the merits. (Doc. No. 9.)

By way of the instant motion, Petitioner requests that this Court issue a certificate of appealability. Petitioner vaguely contends that he has made a substantial showing of the denial of a constitutional right based upon the issues presented in his Petition for Writ of Habeas Corpus and states that the basis of his appeal will be that he is "guilty of possess, but [he is] not guilty of trafficking." (Certificate of Appealability.)

This Court has considered Petitioner's motion and pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller -El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong)(citing Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Application for a Certificate of Appealability (Doc. No. 11) is denied.

SO ORDERED.

Signed: January 7, 2010

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

