

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

RICHARD MILLER,

Petitioner,

:

Case No. 1:07- cv -733

:

-vs-

Magistrate Judge Michael R. Merz

WARDEN, Lebanon Correctional
Institution,

:

Respondent.

**DECISION AND ORDER GRANTING CERTIFICATE OF APPEALABILITY AND
APPOINTMENT OF COUNSEL**

This case is before the Court on Petitioner's Motion for a Certificate of Appealability (Doc. No. 16) which the Court finds is well taken in its entirety. While the Court believes its decision is correct, reasonable jurists could debate

- (1) This Court's decision that the state court's decision was not an unreasonable determination of the facts and
- (2) This Court's decision that the state courts' decision was not an objectively unreasonable application of *Holmes v. South Carolina*, 547 U.S. 319 (2006) and *Chambers v. Mississippi*, 410 U.S. 284 (1972) were correct.

In other words, Petitioner deserves encouragement to pursue these questions in the Sixth Circuit Court of Appeals. His Motion for Certificate of Appealability on the above two questions is GRANTED.

The Court likewise grants Petitioner leave to appeal *in forma pauperis* and orders that Christopher J. Pagan, his attorney in this Court, be appointed to represent him in the Court of Appeals pursuant to 18 U.S.C. § 3006A.

February 3, 2009.

s/ **Michael R. Merz**
United States Magistrate Judge