

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DENNIS M. WOLFEL,

Petitioner,

CASE NO. 2:07-cv-1079

JUDGE FROST

MAGISTRATE JUDGE KEMP

v.

DEB TIMMERMAN-COOPER, et al.,

Respondent.

OPINION AND ORDER

On February 6, 2009, final judgment was entered dismissing the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254. This matter is before the Court on petitioner's March 2, 2009, notice of appeal, request for a certificate of appealability, and request for the appointment of counsel. Doc. Nos. 31-33. For the reasons that follow, petitioner's request for a certificate of appealability, Doc. No. 32, is **DENIED**. Petitioner's request for the appointment of counsel is **DENIED**.

In this habeas corpus petition, petitioner asserts as follows:

1. ... [T]he Ohio Parole Board, its agents, servants, and employees acting in concert and participation with it, did subject or cause petitioner to be subjected to cruel and unusual punishment, in violation of the Eighth Amendment to the Constitution of the United States.
2. ... [T]he Ohio Parole Board, its agents, servants, and employees acting in concert and participation with it, did subject or cause petitioner to be subjected to disproportionate punishment, in violation of the Eighth Amendment to the Constitution of the United States.
3. ... [T]he Ohio Parole Board, its agents, servants, and

employees acting in concert and participation with it, did subject or cause petitioner to be subjected to denial of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

4. ... [T]he Ohio Parole Board, its agents, servants and employees acting in concert and participation with it, did subject or cause petitioner to be subjected to malicious retaliation and punishment for constitutionally protected activities, in violation of the First and Fourteenth Amendments to the Constitution of the United States.

5. ... [T]he Ohio Parole Board, its agents, servants, and employees acting in concert and participation with it, did subject or cause petitioner to be subjected to the denial of the representation of counsel, in violation of the Sixth and Fourteenth Amendments to the Constitution of the United States.

6. ...[T]he Ohio Parole Board, its agents, servants, and employees acting in concert and participation with it, did subject or cause petitioner to be subjected to the denial of relief in a 42 U.S.C. §1983 action in a Federal Court, in violation of the First and Fourteenth Amendments to the Constitution of the United States.

7. ... [T]he Ohio Parole Board, its agents, servants, and employees acting in concert and participation with it, did subject or cause petitioner to be subjected to the loss of the terms, conditions, and benefits of an out-of-court settlement between petitioner and the Ohio Parole Board, as brokered by Assistant Attorney General Joseph M. Mancini, in violation of the Fourteenth Amendment to the Constitution of the United States.

On February 6, 2009, the Court dismissed claims four through seven, and portions of claims one through three relating to the parole board's allegedly improper denial of parole prior to September 2006, as time-barred. The Court dismissed petitioner's claims one through

three relating to the parole board's allegedly improper denial of parole on or after September 2006 on the merits.

Where the Court dismisses a claim on procedural grounds, a certificate of appealability should issue when the prisoner 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 v. McDaniel*, 529 U.S. 473, 484 (2000). Thus, there are two components to determining whether a certificate of appealability should issue when a claim is dismissed on procedural grounds: "one directed at the underlying constitutional claims and one directed at the district court's procedural holding." The court may first "resolve the issue whose answer is more apparent from the record and arguments." *Id.*

When a claim has been denied on the merits, a certificate of appealability may issue only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). This standard is a codification of *Barefoot v. Estelle*, 463 U.S. 880 (1983). *Slack v. McDaniel, supra.* To make a substantial showing of the denial of a constitutional right, a petitioner must show

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." *Barefoot*, 463 U.S., at 893, and n.4

Id.

Petitioner has failed to establish that reasonable jurists would debate whether any

of his claims present a valid claim of the denial of a constitutional right. *See Slack v. McDaniel, supra*. Therefore, his request for a certificate of appealability is **DENIED**. Petitioner's request for the appointment of counsel, Doc. No. 33, likewise is **DENIED**.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
United States District Judge