

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

LEOPOLD GUIDRY,

Petitioner,

CASE NO. 2:08-cv-1191
JUDGE SMITH
MAGISTRATE JUDGE KEMP

v.

WARDEN MICHAEL SHEETS,

Respondent.

OPINION AND ORDER

On June 30, 2010, final judgment was issued dismissing the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254. On July 30, 2010, petitioner filed a Notice of Appeal, which this Court construes as a request for a certificate of appealability. Doc. No. 23. For the reasons that follow, petitioner's request for a certificate of appealability, Doc. No. 23, is **GRANTED**.

In this habeas corpus petition, petitioner asserts the following sole ground for relief:

Petitioner's right to due process of law, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, was violated when the trial court failed to grant Petitioner's motion for a new trial after the prosecution's key witness recanted her testimony implicating Petitioner Guidry.

On June 30, 2010, the Court dismissed petitioner's claim on the merits.

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*, 529 U.S. 473, 484. 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. Upon review of the record, the Court is persuaded that reasonable jurists would debate whether his §2254 petition should have been resolved differently. Therefore, petitioner’s request for a certificate of appealability, Doc. No. 23, is **GRANTED**.

The following issue is certified for appeal:

Was petitioner denied due process when the state trial court denied his motion for a new trial?

IT IS SO ORDERED.

 /s\ George C. Smith
GEORGE C. SMITH
United States District Judge