

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

**MAURICE REID,**

**Petitioner,**

**v.**

**WARDEN, ROSS  
CORRECTIONAL  
INSTITUTION,**

**Respondent.**

**CASE NO. 2:10-cv-80**

**JUDGE EDMUND A. SARGUS, JR.**

**Magistrate Judge Kemp**

**OPINION AND ORDER**

Petitioner Maurice Reid, a state prisoner, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254. On June 27, 2010, the Court dismissed the first three claims of the petition as procedurally defaulted. On March 31, 2011, the Court dismissed the fourth claim on its merits. On April 8, 2011, petitioner filed a notice of appeal. He did not submit the appellate filing fee, so the Court will construe the notice as both a request for a certificate of appealability and as a request for leave to proceed on appeal *in forma pauperis*.

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.*

As to the procedural default ruling, for the reasons more fully set forth in Judge Holschuh’s Opinion and Order filed on June 27, 2010, the Court does not believe that ruling to be fairly debatable. The procedural default in this case was clear - the failure to raise the first two claims on direct appeal barred this Court’s consideration of those claims, and the failure to appeal the third claim (ineffective assistance of appellate counsel) to the Ohio Supreme Court barred review of that claim. Therefore, the Court will not issue a certificate of appealability on these claims, and there is no need to consider whether their merits are debatable.


As to claim four, the Court concluded that in light of the overwhelming evidence of guilt presented at trial and the equivocal nature of any alibi testimony petitioner wished his counsel to present, he could not make out a viable claim for ineffective assistance of trial counsel. The Court also believes that this conclusion is not, on the current record, something about which reasonable jurists could debate. The Court will therefore decline to issue a certificate of appealability on that

claim. Given this disposition, the Court will also deny leave to proceed *in forma pauperis*.

For all of these reasons, petitioner’s notice of appeal (#36), construed as a motion for leave to proceed *in forma pauperis* on appeal and for a certificate of appealability, is **DENIED**.

**IT IS SO ORDERED.**

4-19-2011  
**DATE**

  
**EDMUND A. SARGUS, JR.**  
**UNITED STATES DISTRICT JUDGE**