

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

GARY L. WILLIAMS,
Petitioner,

v.
WARDEN, CHILLICOTHE
CORRECTIONAL INSTITUTION,

Respondent.

CASE NO. 2:11-cv-537

JUDGE GEORGE C. SMITH
Magistrate Judge Kemp

OPINION AND ORDER

In an Opinion filed on July 26, 2011, the Court dismissed this case. Petitioner filed a timely notice of appeal on August 2, 2011. He did not pay the appellate filing fee nor did he file a motion for leave to proceed on appeal *in forma pauperis*.

Because the Court (against petitioner's wishes) construed the petition he filed as seeking habeas corpus relief under 28 U.S.C. §2254, it will construe his notice of appeal as a request for a certificate of appealability.

Where the Court dismisses a claim 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, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983). *Slack v. McDaniel*, 529 U.S. 473, 483-44, (2000). 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.

For the reasons set forth in the Court's Opinion and Order adopting the Magistrate Judge's Report and Recommendation, and for the reasons set forth in that Report and Recommendation, the Court finds that reasonable jurists would not debate either that this case is, in fact, an action seeking habeas corpus relief, or that it is barred by the statute of limitations. The Court therefore **DECLINES** to issue a certificate of appealability. Further, should petitioner submit an *in forma pauperis* application (which he has not yet done), the Court, for similar reasons, **CERTIFIES** that the appeal is not taken in good faith.

IT IS SO ORDERED.

/s/ George C. Smith
George C. Smith
United States District Judge