

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

Cristen L. Myers, Sr., :
 :
 Petitioner : Case No. 2:12-cv-0975
 :
 v. : Judge Frost
 :
 Kevin Jones, Warden, : Magistrate Judge Abel
 :
 Respondent :

ORDER

Petitioner Cristen L. Myers, Sr. has filed a notice of appeal from the Court's September 27, 2013 judgment dismissing his petition for writ of habeas corpus under 28 U.S.C. §2254. Before a petitioner can appeal a judgment dismissing a §2254 action, a certificate of appealability must issue. 28 U.S.C. §2253(c); Rule 22(b), Federal Rules of Appellate Procedure.

When 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.

Id. 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.*

For the reasons set out in the Court's September 27, 2013 Opinion and Order, the Court concludes that petitioner has failed to demonstrate that as to claims one, two and seven this is not a successive petition for writ of habeas corpus. Petitioner's initial petition for writ of habeas corpus challenged his convictions on double jeopardy grounds, and this successive petition does so as well. In accordance with the procedures adopted in *In re Jonathan Sims*, 111 F.3d 45, 47 (6th Cir. 1997), the petition is TRANSFERRED to the United States Court of Appeals for the Sixth Circuit as to these claims.

As to claims three through six, petitioner has failed to exhaust his Ohio court remedies because he did not raise them in his direct appeal as of right. Jurists of reason would not find debatable that petitioner failed to fairly exhaust his Ohio court remedies as to these claims.

Accordingly, petitioner's request for a certificate of appealability is DENIED. Petitioner's motion to proceed *in forma pauperis* is GRANTED, in that the Court determines petitioner is financially indigent, but DENIED, in that it has denied his request for a certificate of appealability.

In accordance with the procedures adopted in *In re Jonathan Sims*, 111 F.3d 45, 47 (6th Cir. 1997), the petition is TRANSFERRED to the United States Court of Appeals for the Sixth Circuit as to claims one, two, and seven.



Gregory L. Frost
United States District Judge