

[currently] states a valid claim of the denial of a constitutional right” and “debatable whether [this Court] was correct in its procedural ruling” – that Petitioner did not fully and properly exhausted state court remedies prior to filing the 28 U.S.C. § 2254 application. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).¹

In the event that Petitioner will file a notice of appeal, the Court notes that he must pay the appellate filing fee or move for leave to proceed *in forma pauperis* on appeal.

SO ORDERED this 27 day of December, 2016.


BARBARA M. G. LYNN
CHIEF JUDGE

¹ Rule 11 of the Rules Governing §§ 2254 and 2255 Cases, as amended effective on December 1, 2009, reads as follows:

(a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.