

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ABDUL-AZIZ RASHID MUHAMMAD,

Petitioner,

v.

Civil Action No. 5:12CV129
(STAMP)

RUSSELL A. PURDUE, Warden,

Respondent.

MEMORANDUM OPINION AND ORDER
DENYING ISSUANCE OF A CERTIFICATE OF APPEALABILITY

On September 11, 2013, the petitioner in the above-styled civil action filed a motion for the issuance of a certificate of appealability. This Court notes that the certificate of appealability language was not included in the memorandum opinion and order affirming and adopting the report and recommendation of the magistrate judge issued on August 23, 2013. ECF No. 35. The petitioner is advised, however, that a certificate of appealability is not required for a federal prisoner proceeding under 28 U.S.C. § 2241. See 28 U.S.C. § 2253(c) (certificate of appealability is required in a § 2255 proceeding or in a habeas corpus proceeding in which the detention complained of arises from process issued by a State court); see also Fed. R. App. P. 22; Drax v. Reno, 338 F.3d 98, 106 n.12 (2d Cir. 2003); see e.g., Sugarman v. Pitzer, 170 F.3d 1145, 1146 (D.C. Cir. 1999) (per curiam) (holding that a certificate of appealability is not required for a federal prisoner to appeal the denial of a § 2241 petition); Forde v. U.S. Parole

Comm'n, 114 F.3d 878, 879 (9th Cir. 1997) (same); Ojo v. INS, 106 F.3d 680, 681-82 (5th Cir. 1997) (same).

This Court again informs the petitioner that should he choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit on the issues to which objection was made, he is ADVISED that he must file a notice of appeal with the Clerk of this Court within 60 days after the date that the judgment order in this case was entered.

For the reasons stated above, the petitioner's motion for the issuance of a certificate of appealability is DENIED.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit copies of this memorandum opinion and order to the pro se petitioner and to counsel of record herein.

DATED: September 11, 2013.

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE