

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

1 STARR DALTON,

Petitioner,

v.

CIVIL ACTION NO. 2:08-cv-01218

W.VA PAROLE BOARD, et al.,

Respondents.

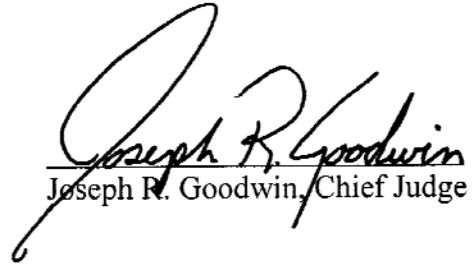
MEMORANDUM OPINION AND ORDER

On January 19, 2010, the court entered an order adopting the Magistrate Judge's Proposed Findings and Recommendation [Docket 9] and denying the petitioner's Petition for Writ of Habeas Corpus [Docket 2]. In its ruling, however, the court, did not determine whether the petitioner is entitled to a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(1). The petitioner filed a notice of appeal on January 29, 2010. On February 3, 2010, the United States Court of Appeals for the Fourth Circuit remanded the case to this court for the limited purpose of supplementing the record with an order granting or denying a certificate of appealability.

Section 2253(c)(1) of Title 28 of the United States Code provides that to appeal a district court's final order in a habeas corpus proceeding, "a circuit judge or justice" must first issue a certificate of appealability. To obtain a certificate of appealability, the petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The petitioner in this case has failed to make such a showing. The court therefore **DENIES** a certificate of appealability.

The court **DIRECTS** the Clerk to send a copy of this Order to the Clerk of Court of the United States Court of Appeals for the Fourth Circuit, counsel of record, and any unrepresented party.

ENTER: March 12, 2010


Joseph R. Goodwin, Chief Judge