

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

DAVID RABB,

Petitioner

v.

CIVIL ACTION NO. 2:09-0159

DAVID BALLARD, Warden,
Mount Olive Correctional Complex,

Respondent

JUDGMENT ORDER

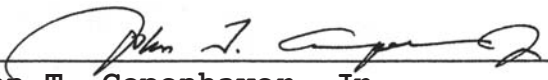
In accordance with the memorandum opinion and order entered this same day, it is ORDERED and ADJUDGED that the petition filed pursuant to 28 U.S.C. § 2254 be, and it hereby is, denied. It is further ORDERED that this action be, and it hereby is, dismissed and stricken from the docket.

The court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive

procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court ORDERS that a certificate of appealability be, and it hereby is, denied. Pursuant to Rule 11, Rules Governing § 2254 Cases, movant may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.

The Clerk is directed to forward certified copies of this order to the petitioner, all counsel of record, and the United States Magistrate Judge.

DATED: March 31, 2011



John T. Copenhaver, Jr.
United States District Judge