

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

JERMICHAEL DESPER,

Petitioner

v.

CIVIL ACTION NO. 2:10-1069
(Criminal No. 2:01-00112-01)

UNITED STATES OF AMERICA,

Respondent

JUDGMENT ORDER


In accordance with the memorandum opinion and order entered today, it is ORDERED and ADJUDGED that petitioner's section 2241 petition, recharacterized as a motion filed pursuant to 28 U.S.C. § 2255 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 additionally 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 Section 2255 Proceedings, petitioner 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 copies of this order to the petitioner, all counsel of record, and the United States Magistrate Judge.

DATED: December 6, 2010



John T. Copenhaver, Jr.
United States District Judge