

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

LEVELT MUSGRAVES,

Petitioner,

v.

JUDY P. SMITH,

Respondent.

Case No. 13-CV-84-JPS
7th Cir. Case No. 16-4064

ORDER

On January 23, 2013, the petitioner, Levelt Musgraves (“Musgraves”), filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket #1). The Court denied that writ on April 10, 2013. (Docket #9). Approximately three and a half years later, on September 23, 2016, Musgraves filed a “Motion for Cause to Excuse [Procedural Default]” (Docket #26), which the Court denied. (Docket #27). On November 16, 2016, Musgraves filed a motion to “expunge” the Court’s previous order (Docket #32), which the Court again denied. (Docket #40).

On December 1, 2016, Musgraves filed a notice of appeal as to these recent orders. (Docket #33). He also filed a motion for leave to appeal without prepayment of the filing fee. (Docket #35). The Court denied that motion on December 5, 2016. (Docket #40). Musgraves did not request this Court to issue a certificate of appealability. However, before a habeas petitioner may take an appeal to the Seventh Circuit, the district court must consider whether to grant the petitioner a certificate of appealability pursuant to 28 U.S.C. § 2253(c). Consequently, the Court construes his motion for leave to appeal without prepayment of the filing fee as containing a request for a certificate of appealability. To obtain a certificate of appealability under 28 U.S.C. § 2253(c)(2), the applicant must make a “substantial showing of the

denial of a constitutional right” by establishing that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal citations omitted).

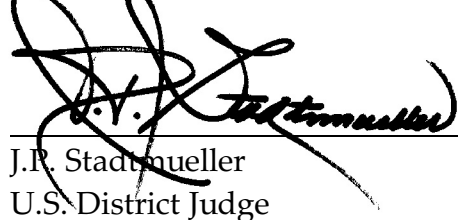
The Court will not issue a certificate of appealability for Musgraves’ latest appeal. As the Court discussed in its orders denying Musgraves’ substantive motions, Musgraves did not articulate sufficient bases for reconsideration of the denial of his petition. (Docket #27 and #30). As the Court concluded on December 5, 2016, “Musgraves. . .provides the Court no new basis to escape the conclusions it reached in dismissing the above-titled action.” (Docket #40 at 2). Thus, because Musgraves’ appeal is meritless, the Court is compelled to deny him certificate of appealability.

Accordingly,

IT IS ORDERED that the petitioner’s request for a certificate of appealability (Docket #35) be and the same is hereby **DENIED**.

Dated at Milwaukee, Wisconsin, this 12th day of January, 2017.

BY THE COURT:



J.R. Stadtmueller
U.S. District Judge