

Fernandez v. NHSP Warden 06-CV-281-SM 08/20/08
UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Lucio E. Fernandez

v.

Civil No. 06-cv-281-SM
Opinion No. 2008 DNH 150

Richard M. Gerry, Warden,
New Hampshire State Prison

O R D E R

Petitioner requests a certificate of appealability ("COA"), permitting him to appeal this court's denial of his petition for habeas corpus relief on the merits. See 28 U.S.C. § 2253(c).

A COA may be issued only where a petitioner has made a "substantial showing of the denial of a constitutional right." Id. When a "district court has rejected the [petitioner's] constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Miller-El v. Cockrell, 537 U.S. 322, 338 (2003), quoting Barefoot v. Estelle, 463 U.S. 880, 893, n. 4 (1983); see also Slack v. McDaniel, 529 U.S. 473, 484 (2000).

In his motion for a COA petitioner merely reiterates the claims and arguments previously offered on the merits and does not address the applicable standard, nor does he attempt to show

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.'" Id., at 336.

I find that petitioner has not met his burden, and decline to issue a COA. The court's opinion directly addresses each of petitioner's claims in light of the applicable standard (either deferential or de novo) and nothing in petitioner's motion suggests either that one or more of his claims should have been resolved differently, or that reasonable jurists could debate that question, or that the claims presented were adequate to deserve encouragement to proceed further. Still, petitioner may seek such a certificate directly from the United States Court of Appeals for the First Circuit.

Conclusion

The motion for a COA (document no. 17) is denied.

SO ORDERED.



Steven J. McAuliffe
Chief Judge

August 20, 2008

cc: Benjamin J. Agati, Esq.
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John Vinson, Esq., NHSP