

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BRIAN J. McGOLDRICK,
Petitioner,

vs.

Case No. 05-3288-JTM

DAVID R. McKUNE, et al.,
Respondent.

MEMORANDUM AND ORDER

This matter comes before the court on petitioner Brian J. McGoldrick's Motion for a Certificate of Appealability (Dkt. No. 23). On May 10, 2006, the court denied petitioner's application for writ of habeas corpus, finding petitioner's claims to be without merit. Petitioner files a lengthy motion that raises the issues already considered and rejected by this court, arguing that reasonable jurists would disagree on these issues.

Under 28 U.S.C. § 2253(c), no movant may appeal a district court's decision denying a writ of habeas corpus without a certificate of appealability issued by a district judge or circuit judge. 28 U.S.C. § 2253(c)(1). The certificate of appealability may be issued only if the petitioner has made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). See Lennox v. Evans, 87 F.3d 431, 433 (10th Cir. 1996), overruled on other grounds by United States v. Kunzman, 125 F.3d 1363 (10th Cir. 1997). The Supreme Court has consistently held that this is a low standard. Miller-El v. Cockrell, 537 U.S. 322, 335, 123 S.Ct.

1029, 1039, 154 L.Ed.2d 931 (2003). A petitioner meets the threshold by demonstrating that the issues are debatable among reasonable jurists, that a court could resolve the issue in favor of petitioner, or that the questions are adequate to deserve encouragement to proceed further. Lozada v. Deeds, 498 U.S. 430, 111 S.Ct. 860, 112 L.Ed.2d 956 (1991); Barefoot v. Estelle, 463 U.S. 880, 893 n. 4, 103 S.Ct. 3383, 3395 n. 4, 77 L.Ed.2d 1090 (1983). In making its determination, the court reviews the claims in the habeas petition and makes a general assessment of their merits. Miller-El v. Cockrail, 537 U.S. 322, 322, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003). While petitioner is not required to prove the merits of his case, petitioner must demonstrate “something more than the absence of frivolity or the existence of mere good faith on his or her part.” Id. at 329 (citations omitted). After reviewing the record, the court finds that the petitioner has not made the required showing.

The court reviewed petitioner’s arguments in its prior order on May 10, 2006. After now reviewing petitioner’s arguments for a certificate of appealability, the court finds there has been no error, and plaintiff does not make a substantial showing of a denial of constitutional right. Reasonable jurists would not disagree with the court’s determination.

IT IS ACCORDINGLY ORDERED this 5th day of July 2006, that the court denies petitioner’s Motion for a Certificate of Appealability (Dkt. No. 23).

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE