

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ADAM N. VALDEZ,

Petitioner,

vs.

Case No. 06-3103-JTM

DAVID MCKUNE, *et. al.*,

Respondents.

MEMORANDUM AND ORDER

This matter comes before the court on petitioner Adam Valdez's motion for certificate of appealability (COA) (Dkt. No. 21), following this court's denial of habeas relief (Dkt. No. 15), and denial of the motion to alter or amend judgment (Dkt. No 18).

Under 28 U.S.C. § 2253(c), a movant must obtain a certificate of appealability issued by a district judge or circuit judge to appeal a district court's decision denying a writ of habeas corpus. 28 U.S.C. § 2253(c)(1). A court should issue a COA only "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This requirement is satisfied if the petitioner demonstrates "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *United States v. Silva*, 430 F.3d 1096, 1100 (10th Cir. 2005) (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003)). Pursuant to § 2253, this court must review the habeas petition and perform a general assessment

on its merits. *Id.* The review should be general, as it is forbidden to engage in a “full consideration of the factual or legal bases adduced in support of the claims.” *Id.* Although Mr. Valdez is not required to prove the merits of his case in his application for COA, he must demonstrate “something more than the absence of frivolity or the existence of mere good faith.” *Miller-El*, 537 U.S. at 338 (internal quotations and citations omitted).

With these principles in mind, this court has carefully reviewed Mr. Valdez’s motion and concludes that reasonable jurists would not debate the resolution of the constitutional claims presented.

IT IS ACCORDINGLY ORDERED this 6th day of November, 2007 that the petitioner’s motion for certificate of appealability (Dkt. No. 21) is denied.

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