

“reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Saiz v. Ortiz*, 392 F.3d 1166, 1171 n.3 (10th Cir. 2004) (quoting *Tennard v. Dretke*, 542 U.S. 274, 282 (2004)).

In his application, petitioner repeats his prior argument that his counsel should have retained a medical expert. He does not address, however, the court’s reasons for concluding that the state courts did not act unreasonably in ruling that trial counsel’s representation was not constitutionally infirm in this instance, including the lack of any evidence in the state court contradicting the prosecution’s medical evidence, which could then demonstrate a real need to retain a medical expert for the defense. Nor has petitioner addressed the court’s ruling that he failed to satisfy the prejudice prong of the governing *Strickland* test.¹

Accordingly, petitioner has failed to meet the standard for the issuance of a COA in this case, and his application is denied.

IT IS SO ORDERED.

Dated this 2nd day of March, 2009, in Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge

¹Nor does petitioner challenge (or seek to appeal) the court’s ruling that it could not consider petitioner’s new medical evidence rebutting the prosecution’s medical evidence.