

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

CHARLES M. TORRENCE,

Petitioner,

v.

Case No. 20-3310-JWB

HAZEL PETERSON, WARDEN,

Respondent.

**MEMORANDUM AND ORDER**

This matter is before the court on Petitioner’s motion for certificate of appealability (Doc. 33) and motion for an extension of time to file notice of appeal (Doc. 35). Shortly after filing the motions, Petitioner filed his notice of appeal. The Tenth Circuit Court of Appeals has ordered a limited remand of this case for the court to determine whether it should issue a certificate of appealability for Defendant’s appeal to proceed. (Doc. 40.)

Rule 11 of the Rules Governing Section 2254 Proceedings states that the court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. “A certificate of appealability may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To satisfy this standard, the applicant must 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.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotations omitted). Petitioner is not required to show that his appeal will succeed. *Id.* at 337.

The court finds that Petitioner has met this standard with respect to his claim that his Sixth Amendment right was violated when he was denied assistance of counsel at his mental competency hearing before the state district court, and it therefore grants a certificate of appealability on this sole issue. The court denies a certificate of appealability as to all other issues raised by Petitioner as he has failed to make the required showing.

Therefore, Petitioner's motion for a certificate of appealability (Doc. 33) is GRANTED IN PART and DENIED IN PART. Petitioner's motion for an extension of time (Doc. 35) is DENIED AS MOOT.

IT IS SO ORDERED. Dated this 8th day of March, 2022.

s/ John W. Broomes  
JOHN W. BROOMES  
UNITED STATES DISTRICT JUDGE