IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DWIGHT D. YORK,	:	
	:	
Petitioner	:	
	:	
VS.	:	CASE NO. 5:07-CV-90001 (CAR)
	:	28 U.S.C. § 2255
UNITED STATES OF AMERICA,	:	
	:	CASE NO. 5:02-CR-27 (CAR)
Respondent	:	
	:	

ORDER

Before the Court is petitioner **DWIGHT D. YORK'S** "Petition for Certificate of Appealability" ("COA"). (R. at 455).

Petitioner previously filed a notice of appeal (R. at 448) from the Court's Order that adopted the United States Magistrate Judge's Report and Recommendation that petitioner's 28 U.S.C. § 2255 petition be denied. (R. at 406, 445, 447). Pursuant to ***Edwards v. United States***, 114 F.3d 1083 (11th Cir. 1997), the Court construed petitioner's notice of appeal as a COA.

In its Order dated August 19, 2009, the Court explained that, under §2253(c), a COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right. The Court found that petitioner had not made such a showing and, therefore, denied the COA.

In his current "Petition for Certificate of Appealability," petitioner references the Court's August 19, 2009 Order and asserts that "the Court erred." (R. at 455, p. 2). To any extent that petitioner is seeking to have this court reconsider its previous Order, the Court has reviewed the record and petitioner's "Petition for Certificate of Appealability" and reaffirms its August 19, 2009 Order. Petitioner has not made a substantial showing of the denial of a constitutional right.[1]

The Court does note that in the final paragraph of petitioner's "Petition for Certificate of Appealability," he explains that the "course of action sought from the 11th Circuit of Appeals (sic)" is to have a COA issued, to have briefing scheduled, and "to be transferred while review is pending."

[1]Petitioner has not shown "that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further'." ***Slack v. McDaniel***, 529 U.S. 473, 484 (2000) (quoting ***Barefoot v. Estelle***, 463 U.S. 880, 893 (1983)).

(R. at 455, p. 23). Pursuant to Fed. R. App. P. 22(b)(1), if the district court denies a COA, "the applicant may request a circuit judge to issue the certificate." If Petitioner wishes to make such a request of the United States Court of Appeals for the Eleventh Circuit, he needs to file that application with the appellate court.

For reasons expressed above and explained in the Court's August 19, 2009 Order, petitioner's application for a COA is **DENIED**.

SO ORDERED, this 28th day of August, 2009.

S/ C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

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