

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JERRY L. VAN CANNON,

Petitioner,

ORDER

16-cv-433-bbc

08-cr-185-bbc

v.

UNITED STATES OF AMERICA,

Respondent.

The Federal Defenders Service has advised the court that the Court of Appeals for the Eighth Circuit found Minn. Stat. § 609.582 unconstitutional in a recent decision in United States v. McArthur, 836 F.3d 933 (8th Cir. 2016). This statutory provision was the basis on which I denied petitioner Jerry L. Van Cannon's motion for a writ of habeas corpus under 28 U.S.C. § 2255. In light of the new decision, it is appropriate to issue petitioner a certificate of appealability, which I had denied him in my order of October 11, 2016, and to request the Federal Defender to recruit counsel for petitioner on appeal

ORDER

IT IS ORDERED that the last four paragraphs of the order entered on October 11,

2016 and the order itself are deleted and the following paragraph and new order are inserted in their place.

Under Rule 11 of the Rules Governing Section 2255 Proceedings, the court must issue or deny a certificate of appealability when entering a final order adverse to a petitioner. To obtain a certificate of appealability, the applicant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004). This means 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 and citations omitted). Petitioner has made a substantial showing that the issues he has presented are adequate to allow him to proceed further. Accordingly, a certificate will issue.

ORDER

IT IS ORDERED that petitioner Jerry L. Van Cannon's motion to post conviction relief under 28 U.S.C. is DENIED. However, IT IS ORDERED that a certificate of appealability shall issue. The Federal Defenders Service is requested to recruit counsel to represent petitioner on appeal.

Entered this 9th day of November, 2016.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge