

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

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A'KINBO J.S. HASHIM-TIGGS,

Petitioner,

ORDER

v.

06-C-536-C

RICHARD SCHNEITER, Warden,  
Wisconsin Secure Program Facility,

Respondent.

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Before the court is A'Kinbo J.S. Hashim-Tiggs's request for leave to proceed in forma pauperis on appeal and request for a certificate of appealability from this court's judgment entered February 21, 2007 denying his petition for a writ of habeas corpus under 28 U.S.C. § 2254.

A certificate of appealability shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right." Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also 28 U.S.C. § 2253(c)(2). In order to make this showing, a petitioner must "sho[w] 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.'" Id., 529 U.S. at 484 (quoting Barefoot v. Estelle, 463 U.S. 880, 893, n.4 (1983)). Further, "[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying

constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Id. Thus, “[d]etermining whether a COA should issue where the petition was dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one directed at the district court’s procedural holding.” Id. at 484-85.

Petitioner seeks a certificate of appealability with respect to his claims of ineffective assistance of counsel, judicial coercion and prosecutorial misconduct. The only claims this court reviewed on the merits were petitioner’s claim of judicial coercion and his claim that his trial lawyer had been ineffective for advising him that an Alford plea was the same as a “no contest” plea. As for petitioner’s remaining claims of ineffective assistance of counsel and prosecutorial misconduct, the court found that petitioner had procedurally defaulted his claims by failing to brief them adequately in his state court appeal.

Having reviewed the report and recommendation and my order adopting it, I am convinced that petitioner has not made a substantial showing of the denial of a constitutional right with respect to any of his claims. For the most part, petitioner’s claims lack an adequate factual basis. For example, his claim of prosecutorial misconduct and one of his claims of ineffective assistance of counsel rest upon petitioner’s belief that the victim’s medical records showed that the victim suffered no injury and that therefore petitioner was

not guilty of battery. As this court explained, however, the victim's complaints of pain and decreased sensation were sufficient to allow a reasonable jury to find petitioner guilty of battery notwithstanding the absence of any injury that was observable on x-ray or MRI scan.

Petitioner's claim that the trial judge coerced him into entering a plea has no support in the record. Equally unsupported is petitioner's claim that he would not have entered a plea had he not been misinformed about the nature of an Alford plea. The record from the sentencing hearing demonstrates that petitioner affirmed his plea after the court made clear that petitioner had entered a no contest plea and not an Alford plea. Further, in the state court proceedings, petitioner did not testify or present any affirmative evidence to support a finding that he would have gone to trial had he known that he was not entering an Alford plea.

In sum, petitioner has failed to make a substantial showing of the denial of any constitutional right. Accordingly, his petition for a certificate of appealability must be denied.

The next question is whether petitioner is entitled to proceed in forma pauperis on appeal. In addition to finding that petitioner is indigent, this court must find that petitioner is taking his appeal in good faith. 28 U.S.C. § 1915(a)(3). To find that an appeal is in good faith, a court need find only that a reasonable person could suppose the appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). Although this is a less demanding standard than that for determining whether to issue a certificate of appealability,

I find that petitioner is unable to meet it. A reasonable person could not suppose there is any merit to appealing claims that are not supported adequately by the facts.

Because I have found that petitioner's appeal is not taken in good faith, it is not necessary to decide whether he is indigent for purposes of appeal or whether he must prepay a portion of the fee.

#### ORDER

IT IS ORDERED that:

1. Petitioner's request for a certificate of appealability is DENIED. Pursuant to Fed. R. App. P. 22(b), if a district judge denies an application for a certificate of appealability, the defendant may request a circuit judge to issue the certificate.

2. Petitioner's request for leave to proceed in forma pauperis is DENIED because I certify that his appeal is not taken in good faith. If petitioner wishes to appeal this decision, he must follow the procedure set out in Fed. R. App. P. 24(a)(5).

Entered this 12th day of March, 2007.

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