

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DANIEL SCOTT,

Petitioner,

v.

MARCUS HARDY,

Respondent.

Case No. 11-cv-89-DRH-SCW

ORDER

HERNDON, Chief Judge:

On October 25, 2012, the Court entered an order denying petitioner Daniel Scott's motion for reconsideration (Doc. 46) of the Court's memorandum and order dismissing the petition for writ of habeas corpus and denying Scott's pending motions as moot. Thus, pursuant to Rule 11 of the Rules Governing Section 2254 Cases, the Court must consider whether it should grant Scott a certificate of appealability.

To obtain a certificate of appealability, a petitioner must make a substantial showing of the denial of a constitutional right by establishing "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." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When the court dismisses a petition on procedural grounds, the determination of whether a certificate of appealability should issue has two components. *Id.* at 484–85. First, the petitioner must show that

reasonable jurists would find it debatable whether the court was correct in its procedural ruling. *Id.* at 484. Next, the petitioner must show that reasonable jurists would find it debatable whether the petition states a valid claim for denial of a constitutional right. *Id.* To obtain a certificate of appealability, the petitioner must satisfy both components. *Id.* at 485.

Here, the Court dismissed Scott's petition because it was untimely. Further, the Court noted that Scott waived his argument that 28 U.S.C. § 2244(d)(1)(D) rendered his petition timely because that argument was not raised before Magistrate Judge Wilkerson and instead was raised for the first time in Scott's objections to Judge Wilkerson's report and recommendation. Again, the Court reiterates that Scott did not timely file his petition, nor has he demonstrated that he argued before Judge Wilkerson that § 2244(d)(1)(D) saved his petition as timely. Accordingly, Scott has not established that jurists of reason would debate the correctness of this procedural ruling. Therefore, the Court denies petitioner a certificate of appealability. His motion for certificate of appealability (Doc. 50) is denied.

IT IS SO ORDERED.

Signed this 31st day of October, 2012.

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David R. Herndon
Date: 2012.10.31
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**Chief Judge
United States District Judge**