

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

LEETON WRIGHT, :  
Petitioner, :  
 :  
v. : Civil No. 3:97CR228(AHN)  
 : 3:01CV443(AHN)  
UNITED STATES OF AMERICA; :  
Defendant. :

MEMORANDUM AND ORDER

Pro se petitioner Leeton Wright ("Wright") has requested a certificate of appealability to appeal this Court's April 8, 2002 denial of his petition for a writ of habeas corpus. For the reasons that follow, Wright's request for a certificate of appealability is DENIED.

A petitioner may not appeal a denial of a habeas petition unless "a circuit justice or judge issues a certificate of appealability." 28 U.S.C.A. § 2253(c)(1). A certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2); Hooper v. United States, 112 F.3d 83, 88 (2d Cir. 1997); see generally, United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997) (discussing the standard for issuing a certificate of appealability).

"The certificate of appealability ... shall indicate which specific issue or issues satisfy the showing required by [§ 2253(c)(2)]." 28 U.S.C. § 2253(c)(3). The Court of Appeals for the

Second Circuit has held that the standard for granting a certificate of appealability is the same as the prior standard for granting a certificate of probable cause. See Nelson v. Walker, 121 F.3d 828, 832 n.3. Therefore, in order for a certificate of appealability to issue, petitioner need not show that he can prevail on the merits but rather must demonstrate "(1) that the issues are debatable among jurists of reason; (2) that a court could resolve the issues in a different manner; or (3) that the questions are adequate to deserve encouragement to proceed further." Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983) (internal quotations omitted)).

The court finds petitioner has not sustained this burden. This court denied petitioner's § 2255 petition because it was untimely<sup>1</sup> and because the collateral relief he sought relating to his federal sentence was procedurally barred.

In Slack v. McDaniel, 529 U.S. 473 (2000), the Supreme Court set forth the standard for a certificate of appealability to issue when the district court has dismissed a habeas petition on procedural grounds. The Court held that when the district court denies the

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<sup>1</sup> The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") which became effective on April 24, 1996, significantly amended 28 U.S.C. §§ 2244, 2253, 2254 and 2255. As a result, 28 U.S.C. § 2255 now provides that federal habeas petitions are subject to a one-year statute of limitations. Here, petitioner pleaded guilty on March 31, 1998. The judgment was entered on September 23, 1998. Wright, however, did not file his § 2255 motion until March 19, 2001, clearly outside the one-year statute of limitations period. Moreover, Wright has not come forward with any legitimate reason to be excused from AEDPA's limitations period.

habeas petition on procedural grounds a certificate of appealability should issue if the petitioner can show both 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. Slack, 120 U.S. at 484. The Court went on to state that "[w]here a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." Id. A plain procedural bar is present here and no reasonable jurist could conclude that Wright timely filed his habeas petition. Accordingly, Wright's request for a certificate of appealability is DENIED.

SO ORDERED this            day of October, 2002 at  
Bridgeport, Connecticut.

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Alan H. Nevas  
United States District Judge