

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
VERNON NORMAN EARLE,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 10-0797 (PLF)
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Order from the United States Court of Appeals for the District of Columbia Circuit, directing prompt notification of this Court's "issuance of either a certificate of appealability or statement why a certificate should not issue." Order, No. 13-5314 (Oct. 21, 2013). A certificate of appealability ("COA") may issue only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253 (c)(2). A "substantial showing" includes "showing 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, 483-84 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). If the certificate is granted, the court must specify which issues raise a substantial showing. *United States v. Weaver*, 195 F.3d 52, 53 (D.C. Cir. 1999).

When, as here, a habeas petition is denied "on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue [if] jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional

right and [if] jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484. On the other hand, the Supreme Court has instructed 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. In such a circumstance, no appeal would be warranted.” *Id.*

For the reasons stated in the memorandum opinion accompanying the dismissal order from which petitioner appeals, the Court finds no reasonably debatable question surrounding its application of the independent and adequate state ground doctrine to resolve this case. It therefore concludes that a COA is unwarranted. Accordingly, it is hereby

ORDERED that a certificate of appealability shall not issue; and it is

FURTHER ORDERED that the Clerk of this Court shall transmit a copy of this Memorandum Opinion and Order to the Clerk of the United States Court of Appeals for the District of Columbia Circuit.

SO ORDERED.

/s/ _____
PAUL L. FRIEDMAN
United States District Judge

DATE: October 24, 2013