

**UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT**

_____,
Appellant,

vs.

CASE NO.: _____

SECRETARY, DEPARTMENT OF
CORRECTIONS, et al.,
Appellees.

_____/

**RENEWED
APPLICATION FOR CERTIFICATE OF APPEALABILITY**

Appellant, Pro Se
DC# _____

**UNITED STATES COURT OF APPEALS
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_____,
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vs.

CASE NO.: _____

SECRETARY, DEPARTMENT OF
CORRECTIONS, et al.,
Appellees.

_____/

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to *11th Cir. R. 26.1* the Petitioner, _____, supplies the following
list of known interested parties:

COMES NOW the Appellant, _____, and respectfully renews his application for a Certificate of Appealability pursuant to *Fed.R.App.P. 22(b)* and *Title 28, U.S.C. §2253*.

This Honorable Court has jurisdiction to issue a Certificate of Appealability and to order him insolvent for costs associated with this appeal as set forth below:

I. CERTIFICATE OF APPEALABILITY

The Appellant has shown, in this Petition for Writ of Habeas Corpus below, and will further show herein “a substantial showing of the denial of a constitutional right” providing a valid basis for the granting of the requested Certificate of Appealability, *28 U.S.C. §2253(c)(2)*.

Procedural History

Material Facts

Questions for COA Issuance

The Appellant presents the following ____ (__) questions that merit further review by the granting of a Certificate of Appealability:

QUESTION #1

It is necessary for the Appellant to establish a substantial showing of the denial of a constitutional right in order to issue the requested certificate. The standard of review for granting a “Certificate of Appealability” is set forth in *Barefoot v. Estelle*, 463 U.S. 880, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983) which states in pertinent part:

A certificate must issue if the appeal presents a ‘question of some substance’ i.e., at least one issue (1) that is ‘debatable among jurists of reason’; (2) ‘that a court could resolve in different manner;’ (3) ‘that is not squarely foreclosed by statute, rule, or authoritative court decision, or... [that is not] lacking any factual basis in the record’.

The Supreme Court admonished the lower courts that they may not deny applications solely because they have already denied the petition on the merits.

[O]bviously, the Petitioner need not show that he should prevail on the merits. He has already failed in that endeavor.

Id., at 463 U.S. at 893 n.4 quoting *Gordon v. Willis*, 516 F. Supp. 911, 913 (N.D. Ga. 1980). Rather, a certificate must issue if the appeal presents a “question of some substance”, i.e., at least a ground that meets one of the three (3) criteria set forth above.

More recently the United States Supreme Court clarified the requisite standard for the granting of certificates in *Miller-El v. Cockrell*, 537 U.S. 322, 123 S.Ct. 1029, 1040, 154 L.Ed.2d 931 (2003) stating:

[W]e do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail. As we stated in *Slack*, “[W]here a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253 (c) is straightforward; the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” 529 U.S. at 484, 120 S.Ct. 1595.

The Appellant contends that the required standard is met so that the issues presented are adequate to warrant further proceedings, *Miller-El* , 537 U.S. 322, as follows:

QUESTION #1

The District Court denied the instant Habeas Petition based upon the determination that _____.

The ____ (__) following bases establish that the subject issue is debatable among jurists of reason so that the Certificate of Appealability should issue:

SAMPLE REASONS FOR ISSUANCE

1. Where other courts of coequal or higher jurisdiction have reached conflicting views on the same issue the issue is clearly debatable among jurists of reason, *Lynce v. Mathis*, 519 U.S. 433, 436 (1997) (citing *Barefoot v. Estelle*, 463 U.S. 880 (1985) (clearly “debatable issue” standard is met where other courts have ruled differently on same issue.))
2. Where the Supreme Court has granted certiorari to review a “similar” question in another case, the issue is clearly debatable among jurists of reason, *e.g.*, *Ford v. Strickland*, 696 F.2d 804, 807 (11th Cir.) (en banc), cert. denied, 464 U.S. 865 (1983).
3. Where this Eleventh Circuit, or another district court in the same district, or elsewhere, has granted a Certificate of Appealability in another case on this issue, the debatable standard is also met, *e.g.*, *Ford v. Strickland*, 734 F.2d 538, 543 (11th Cir.) per curiam aff’d. sub nom, *Wainwright v. Ford*, 467 U.S. 1220 (1984).
4. Where another Circuit has resolved this same issue favorably to a petitioner in another case, the issue is debatable among jurists of reason, *Lozada v. Deeds*, 498 U.S. 430 431-32 (1991).
5. Where the legal question presented by the petition has never been decided by the Eleventh Circuit, the issue is debatable among jurists of reason, *Houston v. Lack*, 487 U.S. 266, 269 (1988).
6. Where the proper adjudication of the claim may require additional evidentiary development, *Smith v. Wainwright*, 737 F.2d 1036, 1037 (11th Cir. 1984); *Ford v. Strickland*, 734 F.2d 538, 543 (11th Cir.) per curiam aff’d. sub nom, *Wainwright v. Ford*, 467 U.S. 1220 (1984).
7. Where there exists a reasonable doubt as to whether the District Court fully and fairly adjudicated the matter, given the actions of the District Court or the state or the possible incompetence of the petitioner’s counsel, the debatable standard is met, *Brown v. Blackburn*, 625 F.2d 35 (5th Cir. 1980).

SEE ALSO HABEAS CORPUS PRACTICE AND PROCEDURE,

6th Edition, By Hertz And Liebman, CHAPTER 35, COA ISSUANCE

Add additional questions pertaining to the denial of your habeas corpus petition as needed.

II. IN FORMA PAUPERIS

The Appellant also respectfully moves this Honorable Court to Order him insolvent for costs associated with this appeal pursuant to *Fed.R.App.P. 24(a)* and attaches hereto the required affidavit consistent with *Fed.R.App.P. Form 4*, see Exhibit A.

CONCLUSION

WHEREFORE, based on the foregoing, the Appellant respectfully prays this Honorable Court to issue the Certificate of Appealability and order him insolvent for costs associated with this appeal.

Under the penalties of perjury, I declare and certify that I do understand English and that I have read the foregoing document and that the facts stated in it are true and correct.

Executed this ____ day of _____, 20____.

Respectfully submitted,

Appellant, Pro Se
DC# _____