

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

ERIC SCOTT BRANCH,

Petitioner,

v.

CASE NO. 4:06cv486-RH

JAMES R. McDONOUGH,  
et al.,

Respondents.

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**CERTIFICATE OF APPEALABILITY**

A separate order has denied Eric Scott Branch's petition for a writ of habeas corpus under 28 U.S.C. § 2254. This order grants a certificate of appealability on one issue and denies a certificate on all others.

A certificate of appealability may be issued only if a petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). *See Miller-El v. Cockrell*, 537 U.S. 322, 335-38, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003) (explaining the meaning of this term); *Slack v. McDaniel*, 529 U.S. 473, 483-84, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000) (same); *Barefoot v.*

*Estelle*, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 77 L. Ed. 2d 1090 (1983); *see also Williams v. Taylor*, 529 U.S. 362, 402-13, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000) (setting out the standards applicable to a § 2254 petition on the merits). As the Court said in *Slack*:

To obtain a COA under § 2253(c), a habeas prisoner must make a substantial showing of the denial of a constitutional right, a demonstration that, under *Barefoot*, includes showing 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*, 529 U.S. at 483-84, *quoting Barefoot*, 463 U.S. at 893 n.4. Further, in order to obtain a certificate of appealability when dismissal is based on procedural grounds, a petitioner must show, “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.” *Slack*, 529 U.S. at 484.

Based on these standards,

IT IS ORDERED:

A certificate appealability is granted on the issue of whether Mr. Branch is entitled to relief based on the prosecutor’s references to Mr. Branch’s failure to

disclose his version of the facts prior to his testimony at the trial. A certificate of appealability is denied on all other issues.

SO ORDERED on March 30, 2010.

s/Robert L. Hinkle  
United States District Judge