

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CLARENCE EASLEY	:	
	:	
Petitioner,	:	
	:	
	:	CIVIL ACTION
	:	
v.	:	NO. 97-2590
	:	
	:	
DONALD VAUGHN, et al.	:	
	:	
Respondents.	:	

**MEMORANDUM-ORDER**

Presently before the Court is Respondents' Motion for Clarification regarding my Order of March 24, 1998 which denied the Petition for Writ of habeas corpus but granted a certificate of appealability. Specifically the Respondents request clarification as to the specific issue or issues that the Court found worthy of appellate review. Accordingly, I supplement the Court's Order of March 24, 1998 with the following memorandum-order.

The 1996 Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2253(c) states in relevant part:

- (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from-- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or (B) the final order in a proceeding under section 2255.
- (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c)(Supp. 1997).

It is settled in this Circuit that under AEDPA, 28 U.S.C. § 2253(c), district courts may issue certificates of appealability. United States v. Eyer, 113 F.3d 470, 472-74 (3d Cir. 1997); see also 3d. Cir. L.A.R. 22.2, as amended Nov. 1, 1997. In order for a district court to grant a certificate of appealability in a habeas corpus case, the court must find a substantial showing of a denial of a federal constitutional right. Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997). For the purpose of issuing a certificate of appealability in a habeas corpus case, a "substantial showing" is a showing that issues are debatable among reasonable jurists, that the court could resolve issues differently, or that issues deserve further proceedings. Id.; Tankleff v. Senkowski, 135 F.3d 235, 241-42 (2d Cir. 1998). Finally the Court notes that the Court of Appeals resolves doubts about whether to grant a certificate of appealability in favor of the habeas petitioner, and may properly consider the severity of the penalty in making that determination. Fuller v. Johnson, 114 F.3d 491, 495 (5th Cir. 1997).

In the instant case, it is arguable that the March 13, 1997 denial per curiam of the petitioner's September, 1996 Petition for Extraordinary Relief by the Pennsylvania Supreme Court can be fairly taken to constitute an adjudication of the merits of Easley's claims.<sup>1</sup> Only if the denial of the petition cannot be fairly taken as an adjudication of the

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<sup>1</sup> If the Pennsylvania Supreme Court had dismissed the petition, or included a one-line statement that "relief is denied for reasons of procedural default," rather than simply denying the petition without comment, it would be clearer that the court's disposition "cannot be fairly taken as an adjudication of the merits of the claims presented." See Commonwealth v. Easley, 183 E.D. Misc. Docket 1996 (Pa. 1997) (stating, "AND NOW, the requests to proceed in forma pauperis and for leave to file are granted and the petition for Extraordinary Relief is denied."). See also Harris v. Reed, 489 U.S. 255, 265 109 S.

merits of the claims presented, and the normal state channels for review were bypassed does the Petition for an Extraordinary Writ fail to exhaust state remedies.

Pitchess v. Davis, 421 U.S. 482, 488, 95 S. Ct. 1748, 1752 (1975).

This Court has agreed with the findings of Chief Magistrate Judge Melinson, that the present petition is procedurally defaulted, however, because it is possible that other reasonable jurists could debate over whether the issue deserves further proceedings, I have certified its appealability.

Thus, it appears that, facially, petitioner has procedurally defaulted regarding his current claims. Accordingly, in the Court's Order of March 24, 1998, I approved and adopted the Magistrate's Report and Recommendation and denied the petition.

Nonetheless, because there remains the credible possibility that petitioner has exhausted his state remedies, I have granted a certificate of appealability as to that issue. An appropriate order follows.

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Ct. 1038, 1044 n.12 (1989) (stating "a state court that wishes to rely on a procedural bar rule in a one-line pro forma order easily can write that 'relief is denied for reasons of procedural default'"). However, from the court's opinion-less denial per curiam, in the instant case, it is not clear on what basis the petition was denied: procedural grounds or the merits of the petition. See Coston v. Zimmerman, 725 F. Supp. 846, 849 (E.D. Pa. 1989) (finding that late filing of petition for allocatur cannot be taken as a procedural default because the Pennsylvania Supreme Court's order merely said it was denied and, thus, deciding to hear petitioner's claims on merits).