

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TIMOTHY TIESS)
)
 Plaintiff,)
)
 v.) Civil No. 04-61-P-C
)
 JEFFREY MERRILL)
)
 Defendant.)

**ORDER DENYING APPLICATION FOR CERTIFICATE
OF APPEALABILITY**

Petitioner has filed an Application to Proceed *in Forma Pauperis* on Appeal (Docket Item No. 9) and a Notice of Appeal (Docket Item No. 15).

Before such appeal may go forward under Fed. R. App. P. 22(b)(1), Defendant must obtain a Certificate of Appealability under 28 U.S.C. § 2253(c) from a district or circuit judge. The burden falls on the district judge to act first. The Court of Appeals has entered herein its Order of May 27, 2004 enforcing this requirement in this case. I have carefully reviewed the Recommended Decision of the Magistrate Judge (Docket Item No. 9) and have entered my Order Affirming that Recommended Decision (Docket Item No. 11) after my own *de novo* review of the record made in the underlying proceedings at trial.

I now **FIND** that Petitioner has made no substantial showing to date in these proceedings "of the denial of a constitutional right." 28 U.S.C. § 225(c)(2).

Accordingly, I **DENY** Petitioner a Certificate of Appealability.

So **ORDERED**.

/s/Gene Carter_____
GENE CARTER
Senior District Court Judge

Dated at Portland, Maine this 11th day of January, 2005.

Plaintiff

TIMOTHY TIESS

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V.

Defendant

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