

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JESSE FRIEDMAN,

Petitioner,

-against-

MEMORANDUM & ORDER  
06-CV-3136(JS)

JOE REHAL, Parole Officer, and  
ROBERT DENNISON, Chairman of the  
New York State Division of Parole,

Respondents, and

THE ATTORNEY GENERAL OF THE STATE  
OF NEW YORK,

Additional Respondent.

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APPEARANCES:

For Petitioner: Ronald L. Kuby, Esq.  
David Pressman, Esq.  
Kuby & Perez, LLP  
119 W. 23rd Street, Suite 900  
New York, New York 10011

For Respondents: Judith R. Sternberg, Esq.  
Nassau County District Attorney's Office  
262 Old Country Road  
Mineola, New York 11501

SEYBERT, District Judge:

On January 4, 2008, this Court denied Petitioner Jesse Friedman's petition for a writ of habeas corpus on the ground that the petition was untimely (the "January Order"). Pending before the Court is Petitioner's application for a certificate of appealability.

The full facts of this case are set forth in detail in the January Order. For the purpose of this Order, the Court will only address the facts relevant to Petitioner's current request for

a certificate of appealability. In 1988, Petitioner entered a plea of guilty to several charges of crimes against children. In 2006, Petitioner filed a writ of habeas corpus in this Court, arguing, inter alia, that he recently discovered that hypnosis was used to refresh the memories of the claimants in his criminal proceeding. Petitioner claimed that a film, *Capturing the Friedmans*, alerted him to the possibility of hypnosis, but he was not fully aware of the information giving rise to his claim until he received materials from the film's director, Andrew Jarecki ("Jarecki").

After extensively reviewing Petitioner's memorandum of law and supporting affidavits, and holding oral argument in open court, this Court determined that Petitioner's claim of hypnosis was time-barred. The Court agreed with Respondent that Petitioner should have known the factual predicate of his claim on January 10, 2003, when Petitioner watched the film for the first time and saw one of the former students allege that he had been hypnotized. Petitioner argued that he did not know the facts of his claim after watching the movie because the movie depicted an anonymous person discussing hypnosis, and Petitioner could not have known at that point that the person depicted was in fact a complainant. Giving Petitioner the benefit of the doubt, this Court held that even if Petitioner had not known the factual predicate of his claim after watching the film, he should have at least known by April of 2003, when he contacted Jarecki to discuss the film. In an e-mail dated

April 3, 2003, Jarecki told Petitioner's former lawyer that "the best time for talking to [the] people [from the film] is when they have already seen tons of press about the film" and further stated that Petitioner should wait to talk to the "possible recanters after they already know the tide is in their favor." The Court found that clearly, at least by April of 2003, Petitioner knew that the film featured real persons who were personally connected to his case, and not actors fictionalizing their involvement. Therefore, the Court found Petitioner's arguments unavailing and dismissed the petition as time-barred.

Petitioner now moves for a certificate of appealability from the January Order. Although the Court denied Petitioner's application as time-barred, the Court finds that reasonable jurists could have found the issue of timeliness to be debatable. Because the Court finds that Petitioner has "made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), the Court GRANTS Petitioner a certificate of appealability. See Lucidore v. New York State Div. of Parole, 209 F.3d 107, 112 (2d Cir. 2000).

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: Central Islip, New York  
July 22, 2008