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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Donald Edward Beaty,	)	No. CV-92-2076-PHX-SRB
Petitioner,	)	<u>DEATH PENALTY CASE</u>
vs.	)	<b>ORDER DENYING CERTIFICATE OF</b>
Charles L. Ryan, et al.,	)	<b>APPEALABILITY</b>
Respondents.	)	

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In this terminated habeas action the Court has denied relief, the Ninth Circuit has affirmed, the Supreme Court has denied certiorari, and the mandate has issued. (*See* Dkts. 333, 336); *Beaty v. Ryan*, 130 S. Ct. 364 (2009). Following issuance of the mandate, Petitioner moved the Court to issue an Order that would assist his factual development of a future state clemency application he plans to file. (Doc. 343.) Noting lack of jurisdiction, the Court denied Petitioner’s motion, and denied reconsideration. (*See* Doc. 346, 349.) Petitioner has noticed an appeal to the Ninth Circuit regarding the Court’s Orders. (Doc. 350.) The Court has evaluated these Orders for suitability for issuance of a certificate of appealability. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b)(1); Rule 11(a), 28 U.S.C. foll. § 2254.

Rule 22(b) of the Federal Rules of Appellate Procedure provides that an applicant cannot take an appeal unless a certificate of appealability has been issued by an appropriate judicial officer. Rule 11(a), 28 U.S.C. foll. § 2254, provides that the district judge must either issue or deny a certificate of appealability when it enters a final order adverse to the

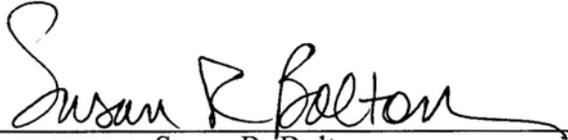
1 applicant. If a certificate is issued, the court must state the specific issue or issues that satisfy  
2 28 U.S.C. § 2253(c)(2). Pursuant to 28 U.S.C. § 2253(c)(2), a certificate of appealability  
3 may issue only when the petitioner “has made a substantial showing of the denial of a  
4 constitutional right.” This showing can be established by demonstrating that “reasonable  
5 jurists could debate whether (or, for that matter, agree that) the matter should have been  
6 resolved in a different manner” or that the issues were “adequate to deserve encouragement  
7 to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*,  
8 463 U.S. 880, 893 & n.4 (1983)).

9 In this case, where the Court has determined that it lacks subject matter jurisdiction over  
10 a motion, however, it also lacks jurisdiction to grant a certificate of appealability. *Cf.*  
11 *Williams v. Chatman*, 510 F.3d 1290, 1294-95 (11th Cir. 2007) (stating that if the district  
12 court lacked subject matter jurisdiction over a FED.R.CIV.P. 60(b) motion, it also lacked  
13 jurisdiction to grant a certificate of appealability).

14 Accordingly,

15 **IT IS HEREBY ORDERED** denying issuance of a certificate of appealability (Doc.  
16 350); this Court is without jurisdiction in the matter.

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18 DATED this 31<sup>st</sup> day of August, 2010.

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22 Susan R. Bolton  
23 United States District Judge  
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