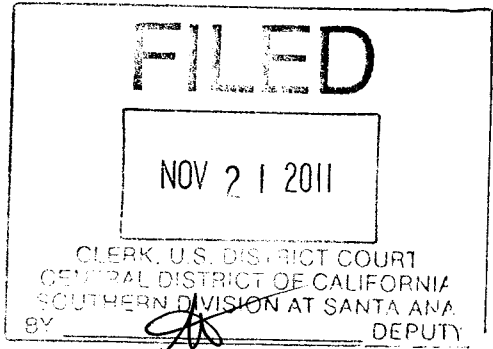


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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

JAVIER JOHNSON,
Petitioner,
v.
KELLY HARRINGTON, Warden,
Respondent.

Case No. CV 09-4737-SJO (MLG)
ORDER DENYING CERTIFICATE OF
APPEALABILITY

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts requires the district court to issue or deny a certificate of appealability ("COA") when it enters a final order adverse to the petitioner. Because jurists of reason would not find it debatable whether this Court was correct in its ruling denying the petition, a COA is denied.

Before a petitioner may appeal the Court's decision denying his petition, a COA must issue. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22(b). The Court must either issue a COA indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App.P. 22(b).

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1 The court determines whether to issue or deny a COA pursuant to
2 standards established in *Miller-El v. Cockrell*, 537 U.S. 322 (2003);
3 *Slack v. McDaniel*, 529 U.S. 473 (2000); and 28 U.S.C. § 2253(c). A COA
4 may be issued only where there has been a "substantial showing of the
5 denial of a constitutional right." 28 U.S.C. § 2253 (c) (2); *Miller-El*,
6 537 U.S. at 330. As part of that analysis, the Court must determine
7 whether "reasonable jurists would find the district court's assessment
8 of the constitutional claims debatable or wrong." *Slack*, 529 U.S. at
9 484, *See also Miller-El*, 537 U.S. at 338.

10 In *Silva v. Woodford*, 279 F.3d 825, 832-33 (9th Cir. 2002), the
11 court noted that this amounts to a "modest standard". (Quoting
12 *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000)). Indeed,
13 the standard for granting a COA has been characterized as "relatively
14 low". *Beardlee v. Brown*, 393 F.3d 899, 901 (9th Cir. 2004). A COA
15 should issue when the claims presented are "adequate to deserve
16 encouragement to proceed further." *Slack*, 529 U.S. at 483-84,
17 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)); *see also*
18 *Silva*, 279 F.3d at 833. If reasonable jurists could "debate" whether
19 the petition could be resolved in a different manner, then the COA
20 should issue. *Miller-El*, 537 U.S. at 330.


21 Under this standard of review, a COA will be denied. In denying
22 the petition for writ of habeas corpus, the Court concluded, for the
23 reasons stated in the Magistrate Judge's Report and Recommendation,
24 that Petitioner was not entitled to habeas corpus relief on his claim
25 involving the admission into evidence of his statements to a fellow
26 inmate, as well as his claims of ineffective assistance of counsel,
27 because he had failed to show that the state court decision was
28 contrary to, or involved an unreasonable application of, clearly

1 established federal law or Supreme Court precedent. *Harrington v.*
2 *Richter*, --- U.S. ---, 131 S.Ct. 770, 783-84 (2011). Petitioner cannot
3 make a colorable claim that jurists of reason would find debatable or
4 wrong the decision denying the petition. Thus, Petitioner is not
5 entitled to a COA.

6 Therefore, pursuant to 28 U.S.C. § 2253, the Court DENIES a
7 certificate of appealability.

8
9 Dated: 11/16/11

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11 
12 _____
13 S. James Otero
14 United States District Judge

14 Presented By:
15 
16 _____
17 Marc L. Goldman
18 United States Magistrate Judge