

FILED

DEC 2 | 2011

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY _____ DEPUTY

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANTHONY UDOM,

Petitioner,

v.

WARDEN, SAN DIEGO CORRECTIONAL
FACILITY,

Respondent.

Case No. CV 11-6755-RGK (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 dismissing the petition as time-barred under 28 U.S.C. § 2244(d)(1), a COA is denied.

Before Petitioner may appeal the Court's decision dismissing 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).

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).
4 Ordinarily, a COA may be issued only where the petitioner has made
5 a "substantial showing of the denial of a constitutional right." 28
6 U.S.C. § 2253 (c) (2); *Miller-El*, 537 U.S. at 330. Where, as here, the
7 district court denies a habeas petition on procedural grounds,
8 without reaching the prisoner's underlying constitutional claim, a
9 COA should issue when the prisoner shows, at least, that jurists of
10 reason would find it debatable whether the petition states a valid
11 claim of the denial of a constitutional right and that jurists of
12 reason would find it debatable whether the district court was correct
13 in its procedural ruling. *Slack*, 529 U.S. at 484, *See also Miller-*
14 *El*, 537 U.S. at 338.

15 In *Silva v. Woodford*, 279 F.3d 825, 832-33 (9th Cir. 2002), the
16 court noted that this amounts to a "modest standard". (Quoting
17 *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000)). Indeed,
18 the standard for granting a COA has been characterized as
19 "relatively low". *Beardlee v. Brown*, 393 F.3d 899, 901 (9th Cir.
20 2004). A COA should issue when the claims presented are "adequate
21 to deserve encouragement to proceed further." *Slack*, 529 U.S. at
22 483-84, (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)); *see*
23 *also Silva*, 279 F.3d at 833. If reasonable jurists could "debate"
24 whether the petition could be resolved in a different manner, then
25 the COA should issue. *Miller-El*, 537 U.S. at 330.

26 Under this standard of review, a COA will be denied. In
27 dismissing this petition for writ of habeas corpus, this Court found
28 that the petition was untimely filed. Petitioner cannot make a

1 colorable claim that jurists of reason would find debatable or wrong
2 the decision dismissing the petition as time-barred. Thus, Petitioner
3 is not entitled to a COA.

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

6
7 Dated: December 20, 2011



8
9
10 R. Gary Klausner
United States District Judge

11
12 Presented By:



13
14
15 Marc L. Goldman
United States Magistrate Judge