

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PEDRO SOLORIO TORRES,)	1:04-CV-05804 OWW SMS HC
)	
Petitioner,)	ORDER ADOPTING FINDINGS AND
)	RECOMMENDATION
)	[Doc. #21]
v.)	
)	ORDER DENYING PETITION FOR WRIT
)	OF HABEAS CORPUS AND DIRECTING
A. A. LAMARQUE, Warden,)	CLERK OF COURT TO ENTER JUDGMENT
)	
Respondent.)	ORDER DECLINING ISSUANCE OF
)	CERTIFICATE OF APPEALABILITY

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On October 16, 2007, the Magistrate Judge issued a [Findings and Recommendation](#) that recommended the petition for writ of habeas corpus be DENIED WITH PREJUDICE. This Findings and Recommendation was served on all parties and contained notice that any objections to the Findings and Recommendation were to be filed within thirty (30) days of the date of service of the order.

On November 21, 2007, Petitioner filed [objections](#) to the Findings and Recommendation. In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de novo*

1 review of the case. Having carefully reviewed the entire file and having considered the objections,
2 the Court concludes that the Magistrate Judge's Findings and Recommendation is supported by the
3 record and proper analysis, and there is no need to modify the Findings and Recommendations based
4 on the points raised in the objections.

5 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
6 district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-
7 El v. Cockrell, 123 S.Ct. 1029, 1039 (2003). The controlling statute in determining whether to issue
8 a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

9 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
10 district judge, the final order shall be subject to review, on appeal, by the court
of appeals for the circuit in which the proceeding is held.

11 (b) There shall be no right of appeal from a final order in a proceeding to test the
12 validity of a warrant to remove to another district or place for commitment or trial
13 a person charged with a criminal offense against the United States, or to test the
validity of such person's detention pending removal proceedings.

14 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an
appeal may not be taken to the court of appeals from—

15 (A) the final order in a habeas corpus proceeding in which the
16 detention complained of arises out of process issued by a State
court; or

17 (B) the final order in a proceeding under section 2255.

18 (2) A certificate of appealability may issue under paragraph (1) only if the
19 applicant has made a substantial showing of the denial of a constitutional right.

20 (3) The certificate of appealability under paragraph (1) shall indicate which
specific issue or issues satisfy the showing required by paragraph (2).

21 If a court denies a petitioner's petition, the court may only issue a certificate of appealability
22 "if jurists of reason could disagree with the district court's resolution of his constitutional claims or
23 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed
24 further." Miller-El, 123 S.Ct. at 1034; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the
25 petitioner is not required to prove the merits of his case, he must demonstrate "something more than
26 the absence of frivolity or the existence of mere good faith on his . . . part." Miller-El, 123 S.Ct. at
27 1040.

28 In the present case, the Court finds that reasonable jurists would not find the Court's

1 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or
2 deserving of encouragement to proceed further. Petitioner has not made the required substantial
3 showing of the denial of a constitutional right. Accordingly, the Court hereby DECLINES to issue a
4 certificate of appealability.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The Findings and Recommendation issued October 16, 2007, is ADOPTED IN FULL;
- 7 2. The Petition for Writ of Habeas Corpus is DENIED with prejudice;
- 8 3. The Clerk of Court is DIRECTED to enter judgment; and
- 9 4. The Court DECLINES to issue a certificate of appealability.

10 IT IS SO ORDERED.

11 **Dated: February 4, 2008**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE