

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MONROE WALTER BURNS,

1:04-cv-6409 LJO DLB HC

Petitioner,

ORDER DISREGARDING PETITIONER'S
REQUEST FOR EXTENSION OF TIME TO
FILE APPEAL AND MOTION FOR
APPOINTMENT OF COUNSEL, AND
DECLINING TO ISSUE CERTIFICATE OF
APPEALABILITY

v.

A.P. KANE, Warden,

Respondent.

[Docs. 51, 52, 54]

On November 28, 2007, the Court denied the instant petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, and judgment was entered in favor of Respondent. (Court Docs. 49, 50.) On January 31, 2008, Petitioner filed a notice of appeal, motion for leave to file late notice of appeal, motion for appointment of counsel, and request for certificate of appealability. (Court Docs. 51, 52, 53, 54.)

1. Motion for Extension of Time to File Appeal

Petitioner requests a thirty day extension of time, until February 28, 2008, to file his notice of appeal. Inasmuch as Petitioner filed his notice of appeal on this same date, January 31, 2008, his request for an extension of time to file such shall be DISREGARDED as unnecessary.

2. Motion for Appointment of Counsel

With regard to Petitioner's motion for the appointment of counsel, as the case in this Court is closed and is on appeal, Petitioner's request should be directed to the Ninth Circuit Court of Appeals.

1 3. Request for Certificate of Appealability

2 Petitioner also seeks to appeal this action, and requests a certificate of appealability. A
3 state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district
4 court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-El v.
5 Cockrell, 537 U.S. 322, 335-336 (2003). The controlling statute, 28 U.S.C. § 2253, provides as
6 follows:

- 7 (a) In a habeas corpus proceeding or a proceeding under section 2255
8 before a district judge, the final order shall be subject to review, on appeal,
9 by the court of appeals for the circuit in which the proceeding is held.
10 (b) There shall be no right of appeal from a final order in a proceeding to
11 test the validity of a warrant to remove to another district or place for
12 commitment or trial a person charged with a criminal offense against the
13 United States, or to test the validity of such person's detention pending
14 removal proceedings.
15 (c)(1) Unless a circuit justice or judge issues a certificate of appealability,
16 an appeal may not be taken to the court of appeals from--
17 (A) the final order in a habeas corpus proceeding in which the
 detention
 complained of arises out of process issued by a State court; or
 (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
20 right.
21 (3) The certificate of appealability under paragraph (1) shall indicate
22 which specific issue or issues satisfy the showing required by paragraph
23 (2).

24 When the district court denies a habeas petition on procedural grounds, as the court did in
25 this action, a certificate of appealability should issue, and an appeal of the district court's order
26 may be taken, if the petitioner shows, at least, that jurists of reason would find it debatable
27 whether the petition states a valid claim of the denial of a constitutional right, and that jurists of
28 reason would find it debatable whether the district court was correct in its procedural ruling.
29 Slack v. McDaniel, 529 U.S. 473, 484-85 (2000).

30 In the present case, the Court finds that reasonable jurists would not find it debatable that
31 the state courts' decision denying Petitioner's petition for writ of habeas corpus were not
32 "objectively unreasonable" and the Court declines to issue a certificate of appealability.

33 Based on the foregoing, it is HEREBY ORDERED that:

- 34 1. Petitioner's motion for an extension of time to file his notice of appeal is

DISREGARDED as unnecessary;

2. Petitioner's motion for appointment of counsel is DISREGARDED; and,

3. The Court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: February 7, 2008

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE