

BOBBY LEWIS VAUGHN,)	1:06-CV-01019 LJO JMD (HC)
)	
Petitioner,)	ORDER ADOPTING FINDINGS AND
)	RECOMMENDATION
)	[Doc. #21]
)	
v.)	ORDER DENYING PETITION FOR WRIT
)	OF HABEAS CORPUS
)	
)	ORDER DIRECTING CLERK OF COURT
WARDEN G.J. GIURBINO,)	TO ENTER JUDGMENT
)	
Respondent.)	ORDER DECLINING TO ISSUE
)	CERTIFICATE OF APPEALABILITY

A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003). The controlling statute in determining whether to issue

1 a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

2 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district
3 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.

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

7 (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--

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

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

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

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

14 If a court denies a petitioner's petition, the court may only issue a certificate of appealability
15 "if jurists of reason could disagree with the district court's resolution of his constitutional claims or
16 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed
17 further." Miller-El, 123 S.Ct. at 1034; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the
18 petitioner is not required to prove the merits of his case, he must demonstrate "something more than
19 the absence of frivolity or the existence of mere good faith on his . . . part." Miller-El, 123 S.Ct. at
20 1040.

21 In the present case, the Court finds that reasonable jurists would not find the Court's
22 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or
23 deserving of encouragement to proceed further. Petitioner has not made the required substantial
24 showing of the denial of a constitutional right. Accordingly, the Court hereby DECLINES to issue a
25 certificate of appealability.

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27 Accordingly, IT IS HEREBY ORDERED that:

28 1. The Findings and Recommendation issued November 25, 2008, is ADOPTED IN FULL;

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2. The Petition for Writ of Habeas Corpus is DENIED with prejudice;
3. The Clerk of Court is DIRECTED to enter judgment; and
4. The Court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: January 12, 2009

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