

IN THE UNITED STATES DISTRICT COURT
OR THE EASTERN DISTRICT OF CALIFORNIA

JASON SAUNDERS,

Petitioner,

Case No. 1:07-cv-00525 ALA (HC)

VS.

JEREMY GARRISON,

Respondent.

ORDER

On December 12, 2008, this Court denied Petitioner Jason Saunders’ (“Petitioner”) application for a writ of habeas corpus. (Doc. 35). Petitioner has filed a timely notice of appeal. (Doc. 37). However, before Petitioner can appeal this decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253(c)(2) “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To meet this standard, Petitioner must show: (1) that the issues are debatable among jurists of reason; or (2) that a court could resolve the issues in a different manner; or (3) that the questions are adequate to deserve encouragement to proceed further. *Lambright v. Stewart*, 220 F.3d 1022, 1024-25 (9th Cir. 2000) (citing *Slack v. McDaniel*, 529 U.S. 473 (2000); *Barefoot v. Estelle*, 463 U.S. 880 (1983)). Petitioner does not have to show “that he should prevail on the

merits [since he] has already failed in that endeavor.” *Lambright*, 220 F.3d at 1025 (citing *Barefoot*, 463 U.S. at 893 n. 4).

In his application for a writ of habeas corpus, Petitioner challenged a prison disciplinary hearing that resulted in a loss of credits. In denying his application, this Court found that Petitioner had failed to exhaust his administrative remedies which constituted a procedural default. In the last reasoned decision issued by the state courts, the Fresno County Superior Court reviewed Petitioner’s claims and held that he had “failed to properly exhaust his administrative remedies in a timely manner.” (Doc. 13, Ex. C). Petitioner has failed to rebut the evidence in the record demonstrating that his administrative grievance was properly rejected as untimely. As such, Petitioner’s arguments do not present issues that are debatable among jurists of reason; therefore, this Court will not encourage Petitioner to seek further review. This Court also finds that no other court would resolve the issues presented in a different manner.

Accordingly, it is HEREBY ORDERED that a certificate of appealability shall not issue.

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DATED: January 22, 2009

/s/ Arthur L. Alarcón
UNITED STATES CIRCUIT JUDGE
Sitting by Designation