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

PETER JORDAN CHIESA,

Petitioner,

Case No.1:07-cv-00667 ALA (HC)

vs.

MARTIN VEAL, Warden

ORDER

Respondent.

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On January 20, 2009, this Court denied Peter Jordan Chiesa’s (“Petitioner”) application for a writ of habeas corpus. Petitioner filed a Notice of Appeal on January 28, 2009. (Doc. 36). Pending before this Court is Petitioner’s request for a certificate of appealability. (Doc. 37). Petitioner seeks to certify “the issue of whether Petitioner was denied his right to be free from a cruel and unusual punishment under the Eighth Amendment, in a noncapital case, as his sentence was grossly disproportionate in that it was not commensurate with petitioner’s culpability due to his undisputed vascular dementia.” (*Id.* at 2).

“[A] state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of his petition.” *Miller-El v. Cockrell*, 537 U.S. 322, 335 (2003); 28

1 U.S.C. § 2253. Therefore, before Petitioner can appeal this Court’s judgement, a certificate of
2 appealability must issue to provide the Ninth Circuit jurisdiction to consider this appeal. 28
3 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1).

4 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has
5 made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).
6 “Under the controlling standard, a petitioner must sho[w] that reasonable jurists could debate
7 whether . . . the petition should have been resolved in a different manner or that the issues
8 presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*,
9 537 U.S. 322, 336 (2003)(internal quotations omitted).

10 Petitioner has failed to cite a non-capital case that requires state legislators to grant
11 judges the authority to make individual assessments that will permit a trial court to deviate from
12 imposing a mandatory life-sentence.

13 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability shall not issue
14 because Petitioner has failed to show that reasonable jurists would debate this Court’s denial of
15 Petitioner’s application for a writ of habeas corpus.

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17 DATED: February 2, 2009

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