

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROGER ERNEST CHAVEZ,  
Petitioner,  
v.  
K. MENDOZA-POWERS, Warden,  
Respondent. ) 1:08-CV-01559 AWI SMS HC  
 ) Appeal No. 09-16344  
 ) ORDER DECLINING ISSUANCE OF  
 ) CERTIFICATE OF APPEALABILITY  
 ) ORDER DIRECTING CLERK OF COURT  
 ) TO SERVE COPY OF ORDER ON NINTH  
 ) CIRCUIT COURT OF APPEALS  
)

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

On June 8, 2009, the undersigned issued an order dismissing the petition for violating the statute of limitations. Petitioner filed a notice of appeal and the appeal was processed to the Ninth Circuit Court of Appeals. On June 16, 2010, the Ninth Circuit remanded the case to this Court for the limited purpose of granting or denying a certificate of appealability.<sup>1</sup>

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

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court

<sup>1</sup> A certificate of appealability was not issued before the appeal was processed in the first instance because none was required under Ninth Circuit precedent at the time. See White v. Lambert, 370 F.3d 1002, 1004 (9<sup>th</sup> Cir.2004); Rosas v. Nielsen, 428 F.3d 1229, 1231-32 (9<sup>th</sup> Cir.2005) (per curiam) (no requirement for prisoners to obtain certificate of appealability to review denial of habeas petition challenging administrative decision).

1 of appeals for the circuit in which the proceeding is held.

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

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

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

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

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

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

16 When the district court denies a habeas petition on procedural grounds without reaching the  
17 prisoner's underlying constitutional claim, a certificate of appealability should issue, and an appeal of  
18 the district court's order may be taken, if the petitioner shows, at least, that jurists of reason would  
19 find it debatable whether the petition states a valid claim of the denial of a constitutional right, and  
20 that jurists of reason would find it debatable whether the district court was correct in its procedural  
21 ruling. Slack v. McDaniel, 529 U.S. 473, 484-85 (2000).

22 In the present case, the Court finds that reasonable jurists would not find the Court's  
23 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or  
24 deserving of encouragement to proceed further. Reasonable jurists would not disagree with the  
25 court's finding that the petition violated 28 U.S.C. § 2244(d)'s one year statute of limitations.  
26 Accordingly, the Court hereby DECLINES to issue a certificate of appealability. The Clerk of Court  
27 is DIRECTED to serve a copy of this order on the Ninth Circuit Court of Appeals.

28 IT IS SO ORDERED.

29 Dated: June 25, 2010

  
30 CHIEF UNITED STATES DISTRICT JUDGE