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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AARON GILLUM,)	1:09-CV-147 AWI JMD (HC)
)	
Petitioner,)	ORDER DENYING PETITIONER’S MOTION
)	FOR A CERTIFICATE OF APPEALABILITY
v.)	[Doc. 23]
)	
)	ORDER MODIFYING NUNC PRO TUNC
JAMES D. HARTLEY,)	ORDER DENYING PETITION FOR WRIT OF
)	HABEAS CORPUS [Doc. 21]
Respondent.)	

Aaron Gillum (hereinafter “Petitioner”) is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The Magistrate Judge issued a Findings and Recommendation on July 12, 2010, recommending that the petition for writ of habeas corpus be DENIED with prejudice. (Court Doc. 20.) The Court, in accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), conducted a *de novo* review of the case and concluded that the Magistrate Judge’s Findings and Recommendations was supported by the record and contains the proper analysis. Accordingly, the Court adopted the Findings and Recommendation and denied the petition for writ of habeas corpus on September 27, 2010. (Court Doc. 21.¹) In that order, the Court declined to issue a certificate of appealability.

On October 4, 2021, Petitioner filed a motion for a certificate of appealability.²

¹The Court notes that the September 27, 2010 order contained the wrong name in the body of the order.

²In the motion, Petitioner states that he is requesting “the U.S. District Court issue a Certificate of Appealability, (C.O.A.), permitting Petitioner to appeal from the judgment entered by Chief Justice George (Supreme Court of California), on July 14 2010 denying Petitioner[’]s writ of habeas corpus.” The Court presumes that since Petitioner filed this motion with his notice of appeal in this case, where Petitioner is challenging the denial of his federal petition, Petitioner is seeking a COA for his federal appeal.

1 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
2 district court's denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-*
3 *El v. Cockrell*, 537 U.S. 322, 335 (2003) (citing 28 U.S.C. § 2253). The controlling statute regarding
4 a certificate of appealability provides that a circuit judge or judge may issue a certificate of
5 appealability where "the applicant has made a substantial showing of the denial of a constitutional
6 right." 28 U.S.C. § 2253. A habeas petitioner, who has been denied relief by the district court, may
7 fulfill the standard required by section 2253 by showing that "jurists of reason could disagree with
8 the district court's resolution of his constitutional claims or that jurists could conclude the issues
9 presented are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327
10 (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). While the petitioner is not required to prove
11 the merits of his case, "a prisoner seeking a COA must prove 'something more than the absence of
12 frivolity' or the existence of mere 'good faith' on his or her part." *Miller-El*, 537 U.S. at 338
13 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983), *superseded on other grounds by* 28 U.S.C. §
14 2253(c)(2)).

15 In the present case, the Court had found that reasonable jurists would not find the Court's
16 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or that
17 Petitioner's claims are deserving of encouragement to proceed further. The Court further found that
18 Petitioner had not made the required substantial showing that he had been denied a constitutional
19 right. Petitioner's motion for a certificate of appealability fails to provide any new arguments that
20 would modify the Court's findings. Consequently, the Court hereby DENIES Petitioner's motion for
21 a certificate of appealability.

22 Accordingly, IT IS HEREBY ORDERED that:

- 23 1. The Court's Order of September 27, 2010 (Court Doc. 21) is modified *nunc pro tunc*
24 on Page 1, line 16, to replace "Mark W. Sanders" with "Aaron Gillum"; and
- 25 2. The Court DENIES Petitioner's motion for a certificate of appealability.

26 IT IS SO ORDERED.

27 Dated: October 14, 2010

28 
CHIEF UNITED STATES DISTRICT JUDGE