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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TAHEE ABD RASHEED,	1:09-cv-01216-DLB (HC)
Petitioner,	ORDER DECLINING TO ISSUE
v.	CERTIFICATE OF APPEALABILITY
	[Doc. 6]
PAROLE COMMISSIONER, et.al.,	
Respondents.	

Petitioner filed the instant petition for writ of habeas corpus on July 9, 2009, pursuant to 28 U.S.C. § 1651(a). (Court Doc. 1.) Petitioner consented to Magistrate Judge jurisdiction. (Court Doc. 3.)

On August 7, 2009, the Court dismissed the petition for failure to state a cognizable claim pursuant to § 1651(a), and judgment was entered. (Court Docs. 4, 5.)

On September 14, 2009, Petitioner filed a notice of appeal. (Court Doc. 6.) On October 19, 2009, the United States Court of Appeals for the Ninth Circuit, the case was remanded back to this Court for purposes of granting or denying a certificate of appealability.

When a district court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, the petitioner must show, in order to obtain a certificate of appealability: (1) that jurists of reason would find it debatable whether the petition stated a valid claim of a denial of a constitutional right; and (2) that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473,

1 484 (2000). While both showings must be made to obtain a certificate of appealability, “a court
2 may find that it can dispose of the application in a fair and prompt manner if it proceeds first to
3 resolve the issue whose answer is more apparent from the record and arguments.” Slack, 529
4 U.S. at 485.

5 The Court finds that Petitioner has failed to make an adequate showing. The Court does
6 not find that jurists of reason would not find it debatable whether the petition was properly
7 dismissed, without prejudice, for failure to exhaust the state judicial remedies. Petitioner has not
8 made the required substantial showing of the denial of a constitutional right. Accordingly, the
9 Court hereby DENIES Petitioner's motion for certificate of appealability.

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11 IT IS SO ORDERED.

12 **Dated: October 27, 2009**

/s/ Dennis L. Beck
13 UNITED STATES MAGISTRATE JUDGE
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