

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GLENN EDWARD HARDY,	)	1:09-CV-01934-LJO DLB HC
	)	
Petitioner,	)	ORDER DENYING CERTIFICATE OF APPEALABILITY
	)	[DOC. 23]
v.	)	
	)	
DERRAL G. ADAMS,	)	ORDER DISREGARDING PETITIONER’S REQUEST FOR APPOINTMENT OF COUNSEL [DOC. 23]
	)	
Respondent.	)	

---

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

On April 18, 2011, the Magistrate Judge issued a Findings and Recommendation that recommended the petition be DENIED with prejudice and on April 27, 2011, Petitioner filed objections to the findings and recommendations. On June 9, 2011, the Court entered an order adopting the Magistrate Judge's Findings and Recommendations and dismissing Petitioner's application for a writ of habeas corpus. (Doc. 21). Judgment was entered on June 9, 2011. (Doc. 22). On June 20, 2011, Petitioner filed a timely Notice of Appeal which included a request for issuance of a certificate of appealability and a request for the appointment of counsel. (Doc. 23).

As to Petitioner’s request for a certificate of appealability, 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, 531 U.S. 322, 336 (2003). The controlling statute in determining whether to issue a certificate of appealability is 28 U.S.C.

1 §2253, which provides that a circuit judge or judge may issue a certificate of appealability where  
2 “the applicant has made a substantial showing of the denial of a constitutional right.” Where the  
3 court denies a habeas petition, the court may only issue a certificate of appealability “if jurists of  
4 reason could disagree with the district court’s resolution of his constitutional claim or that jurists  
5 could conclude the issues presented are adequate to deserve encouragement to proceed further.”  
6 Miller-El, 537 U.S. at 326; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the Petitioner is not  
7 required to prove the merits of his case, he must demonstrate “something more than the absence of  
8 frivolity or the existence of mere good faith on his . . . part.” Miller-El, 537 U.S. at 338. In the  
9 present case, the Court finds that reasonable jurists would not find the Court’s determination that  
10 Petitioner is not entitled to federal habeas corpus relief debatable; thus Petitioner’s claim is not  
11 deserving of encouragement to proceed further. Petitioner has not made the required substantial  
12 showing of the denial of a constitutional right. Consequently, Petitioner's request for issuance of a  
13 certificate of appealability (Doc. 23), is DENIED.

14 In regards to Petitioner’s request for counsel, because Petitioner is seeking counsel to  
15 represent him before the Ninth Circuit, the Court will disregard the request as it is better suited for  
16 review by the Ninth Circuit. If Petitioner wishes to pursue this motion, Petitioner is to re-file his  
17 motion with the Court of Appeals for the Ninth Circuit.

18

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Petitioner’s request for a Certificate of Appealability is DENIED; and  
21 2. Petitioner’s request for appointment of counsel is DISREGARDED.

22 IT IS SO ORDERED.

23 **Dated: June 23, 2011**

**/s/ Lawrence J. O'Neill**  
**UNITED STATES DISTRICT JUDGE**

24

25

26

27

28