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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT BERTOLA,

1:09-cv-02135-SMS (HC)

Petitioner,

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS FOR FAILURE TO STATE A COGNIZABLE CLAIM, DIRECTING CLERK OF COURT TO TERMINATE ACTION, AND DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY

v.

JAMES HARTLEY,

Respondent.

[Doc. 1]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner has consented to the jurisdiction of the United States Magistrate Judge. (Court Doc. 8.)

Petitioner filed the instant petition for writ of habeas corpus on November 17, 2009 in the United States District Court for the Northern District of California. (Court Doc. 1.) On December 2, 2009, the petition was transferred to this Court.

On December 22, 2009, the Court dismissed the instant petition with leave to amend. (Court Doc. 9.) On December 31, 2009, Petitioner filed a motion for reconsideration, which was denied on February 18, 2010, and Petitioner was directed to file an amended petition within thirty days. (Court Docs. 11, 12.)

On March 1, 2010, Petitioner filed a “motion to waive the right to challenge any specific hearing and/or parole denial by the California Board of Prison Hearings.” (Court Doc. 13.) It appears that Petitioner is requesting to go forward on his original petition and does not wish to

1 file an amended petition. However, the Court dismissed Petitioner's original petition for failure
2 to state a cognizable claim, and granted Petitioner leave to amend. Because Petitioner has not
3 filed an amended petition, the instant action must be dismissed pursuant to this Court's order of
4 December 22, 2009. (Court Doc. 9.)

5 Based on the foregoing, it is HEREBY ORDERED that:

- 6 1. The instant petition for writ of habeas corpus is DISMISSED for failure to state a
7 cognizable claim;
- 8 2. The Clerk of Court is directed to terminate this action; and
- 9 3. The court declines to issue a Certificate of Appealability. 28 U.S.C. § 2253(c);
10 Slack v. McDaniel, 529 U.S. 473, 484 (2000) (in order to obtain a COA,
11 petitioner must show: (1) that jurists of reason would find it debatable whether the
12 petition stated a valid claim of a denial of a constitutional right; and (2) that jurists
13 of reason would find it debatable whether the district court was correct in its
14 procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000). In the present
15 case, the Court does not find that jurists of reason would not find it debatable
16 whether the petition was properly dismissed for failure to state a cognizable claim
17 under 28 U.S.C. § 2254(d). Petitioner has not made the required substantial
18 showing of the denial of a constitutional right.

19
20 IT IS SO ORDERED.

21 **Dated:** March 29, 2010

22 /s/ Sandra M. Snyder
23 UNITED STATES MAGISTRATE JUDGE
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