

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

BENJAMIN CARANCHINI,	)	1:10-CV-02127 SMS HC
	)	
Petitioner,	)	ORDER GRANTING MOTION TO DISMISS
	)	[Doc. #13]
v.	)	
	)	ORDER DIRECTING CLERK OF COURT
	)	TO ENTER JUDGMENT AND CLOSE CASE
SECRETARY, C.D.C.R.,	)	
	)	ORDER DECLINING ISSUANCE OF
Respondent.	)	CERTIFICATE OF APPEALABILITY

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has consented to the jurisdiction of the magistrate judge pursuant to 28 U.S.C. § 636(c).

On January 1, 2011, Petitioner filed a motion to dismiss the petition for writ of habeas corpus without prejudice. Petitioner acknowledges that he is challenging the conditions of confinement and he states he is pursuing relief by way of a civil rights complaint pursuant to 42 U.S.C. § 1983. Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, a petitioner may dismiss an action without an order from the Court by filing a notice of dismissal before the respondent files an answer or motion for dismissal. Pursuant to Rule 12 of the Rules Governing Section 2254 Cases, the "Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory

1 provisions or these rules, may be applied to a proceeding under these rules."

2 At this time, Respondent has not filed a formal answer to the petition for writ of habeas  
3 corpus.

4 Certificate of Appealability

5 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a  
6 district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-  
7 El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue  
8 a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

9 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a  
10 district judge, the final order shall be subject to review, on appeal, by the court  
of appeals for the circuit in which the proceeding is held.

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

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

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

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

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

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

25 If a court denies a petitioner's petition, the court may only issue a certificate of appealability  
26 "if jurists of reason could disagree with the district court's resolution of his constitutional claims or  
27 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed  
28 further." Miller-El, 537 U.S. at 327; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the  
petitioner is not required to prove the merits of his case, he must demonstrate "something more than  
the absence of frivolity or the existence of mere good faith on his . . . part." Miller-El, 537 U.S. at  
338.

In the present case, the Court finds that reasonable jurists would not find the Court's

1 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or  
2 deserving of encouragement to proceed further. Petitioner has not made the required substantial  
3 showing of the denial of a constitutional right. Accordingly, the Court hereby DECLINES to issue a  
4 certificate of appealability.

5 Accordingly, IT IS HEREBY ORDERED:

- 6 1) The petition for writ of habeas corpus is DISMISSED;
- 7 2) The Clerk of Court is DIRECTED to enter judgment and close the case; and
- 8 3) The Court DECLINES to issue a certificate of appealability.

9  
10  
11 IT IS SO ORDERED.

12 **Dated: January 18, 2011**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE