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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GUILLERMO VERA,

Petitioner,

v.

CONNIE GIPSON,

Respondent.

Case No. 1:13-cv-00814-AWI-SKO HC

**ORDER DENYING CERTIFICATE OF
APPEALABILITY**

(Doc. 62)

Petitioner, a state prisoner serving a determinate term for aggravated assault and an indeterminate term of thirty years to life for second degree murder, filed this action seeking relief under 28 U.S.C. § 2254. He now seeks to appeal this Court's denial of his motion to reconsider/amend the Court's findings under F.R.Civ.P. 59. (Doc. 56).

The Court denied Petitioner's reconsideration motion on September 11, 2015, finding that the motion was untimely and that, in any event, Petitioner's disagreement with the Court's ruling was not adequate grounds for reconsideration. The order also reminded Petitioner that the introduction of new issues, particularly claims relating to conditions of confinement that are properly brought in a civil rights action under 42 U.S.C. § 1983, was inappropriate in a motion for reconsideration.

On October 14, 2015, Petitioner filed a notice of appeal. (Doc. 58) On October 30, 2015, the

1 Ninth Circuit remanded the case for the limited purpose of granting a certificate of appealability.
2 (Doc. 62)

3 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district
4 court's denial of his petition, but may only appeal in certain circumstances. Miller-El v. Cockrell,
5 537 U.S. 322, 335-36 (2003). In a proceeding under 28 U.S.C. § 2254, an applicant may not appeal
6 a District Court judgment unless the District Judge or a Circuit Judge issues a certificate of
7 appealability. See 28 U.S.C. § 2253(c)(1)(A); F.R.App.P. 22(b); United States v. Winkles, 795 F.3d
8 1134, 1140-41 (9th Cir. 2015); Hanson v. Mahoney, 433 F.3d 1107, 1111 (9th Cir. 2006). Section
9 2253(c) provides:

10
11 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an
12 appeal may not be taken to the court of appeals from—

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

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

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

19 (3) The certificate of appealability under paragraph (1) shall indicate
20 which specific issues or issues satisfy the showing required by paragraph
21 (2).

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

1 In the present case, the Court finds that reasonable jurists would not find the Court's
2 determination that Petitioner is not entitled to federal habeas corpus relief on reconsideration
3 debatable, wrong, or deserving of encouragement to proceed further.

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5 **CONCLUSION AND ORDER**

6 The Court hereby DECLINES to issue a certificate of appealability.

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9 IT IS SO ORDERED.

10 Dated: November 4, 2015


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SENIOR DISTRICT JUDGE