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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALVIN BERNARD JONES,

Petitioner,

v.

J. GASTELO,

Respondent.

Case No. 1:18-cv-00493-JDP

ORDER DECLINING TO ISSUE  
CERTIFICATE OF APPEALABILITY OF  
ORDER DENYING PETITIONER’S MOTION  
FOR RECONSIDERATION

ECF No. 24

Petitioner Alvin Bernard Jones, a state prisoner without counsel, filed a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. Both parties have consented to the jurisdiction of a magistrate judge. ECF Nos. 6, 13. On June 5, 2019, the petition was denied on the merits and the case was closed. ECF Nos. 20, 21. On July 12, 2019, petitioner filed objections to this court’s denial of his petition and requested an evidentiary hearing. ECF No. 23. On December 24, 2019, we construed petitioner’s objections as a motion for reconsideration and denied the motion on the merits. ECF No. 24. Petitioner appealed our order denying his motion for reconsideration to the Court of Appeals for the Ninth Circuit. ECF No. 25. The Court of Appeals remanded the case so that we could consider whether to issue a certificate of appealability. ECF No. 28 at 2. For the following reasons, we deny to issue a certificate of appealability.

**Discussion**

A petitioner seeking a writ of habeas corpus has no absolute right to appeal a district

1 court's denial of a final order; he may appeal only in limited circumstances. *See* 28 U.S.C.  
2 § 2253; *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). Rule 11 Governing Section 2254  
3 Cases requires a district court to issue or deny a certificate of appealability when entering a final  
4 order adverse to a petitioner. *See also* Ninth Circuit Rule 22-1(a); *United States v. Asrar*, 116  
5 F.3d 1268, 1270 (9th Cir. 1997). An order denying a Rule 60(b) motion for reconsideration is a  
6 "final, appealable order." *See United States v. Winkles*, 795 F.3d 1134, 1139 (9th Cir. 2015). A  
7 certificate of appealability should only issue for the denial of a Rule 60(b) motion in a habeas  
8 proceeding if (1) jurists of reason would find it debatable whether the "district court abused its  
9 discretion in denying the Rule 60(b) motion" and (2) jurists of reason would find it debatable  
10 whether the underlying habeas petition "states a valid claim of the denial of a constitutional  
11 right." *United States v. Winkles*, 795 F.3d 1134, 1143 (9th Cir. 2015). The second prong of this  
12 test requires the petitioner to show that "jurists of reason could disagree with the district court's  
13 resolution of his constitutional claims or that jurists could conclude the issues presented are  
14 adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327; *see Slack v.*  
15 *McDaniel*, 529 U.S. 473, 484 (2000). The petitioner must show "something more than the  
16 absence of frivolity or the existence of mere good faith." *Miller-El*, 537 U.S. at 338.

17 Here, jurists of reason would not find it debatable whether we abused our discretion in  
18 denying petitioner's Rule 60(b) motion. In his motion for reconsideration, petitioner failed to  
19 present any of the arguments required for a motion for reconsideration—such as mistake, fraud,  
20 inadvertence, or newly-discovered evidence. *See* ECF No. 24 at 2. Additionally, reasonable  
21 jurists would not find it debatable whether the underlying habeas petition states a valid claim of  
22 the denial of a constitutional right. Petitioner's constitutional claims were fully considered and  
23 denied on the merits. *See* ECF No. 20. Thus, we decline to issue a certificate of appealability for  
24 the denial of petitioner's motion for reconsideration.

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**Order**

This court declines to issue a certificate of appealability for the denial of petitioner’s motion for reconsideration. ECF No. 24. The Clerk of the Court is directed to serve a copy of this order on the Court of Appeal for the Ninth Circuit.

IT IS SO ORDERED.

Dated: February 6, 2020

  
UNITED STATES MAGISTRATE JUDGE

No. 206.