

1  
2  
3  
4  
5  
6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 MARK S. MUSZYNSKI,

11 Petitioner,

No. CIV S-05-0825 JAM KJM P

12 vs.

13 D.L. RUNNELS, et al.,

14 Respondents.

ORDER

15 \_\_\_\_\_/  
16 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of  
17 this court's October 6, 2008 dismissal of his application for a writ of habeas corpus. Before  
18 petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c);  
19 Fed. R. App. P. 22(b).

20 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the  
21 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.  
22 § 2253(c)(2). When the district court denies a habeas petition on procedural grounds without  
23 reaching the prisoner's underlying constitutional claim, a certificate of appealability should issue  
24 when the prisoner shows that jurists of reason would find it debatable whether the petition states  
25 a valid claim of the denial of a constitutional right and that jurists of reason would find it  
26 debatable whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529

1 U.S. 473, 484-85 (2000). The certificate of appealability must “indicate which specific issue or  
2 issues satisfy” the above requirements. 28 U.S.C. § 2253(c)(3).

3 For the reasons set forth in the magistrate judge’s August 13, 2008 findings and  
4 recommendations, and this court’s October 6, 2008 order, jurists of reason would not find it  
5 debatable whether petitioner’s application was properly dismissed. Accordingly, a certificate of  
6 appealability should not issue in this action.

7 IT IS SO ORDERED.

8 DATED: February 18, 2009

9  
10 /s/ John A. Mendez  
11 UNITED STATES DISTRICT JUDGE

12 musz0825.831  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26