

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK S. MUSZYNSKI,

Petitioner, No. CIV S-05-0825 JAM KJM E

VS.

D.L. RUNNELS, et al.,

Respondents. ORDER

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

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a certificate of appealability should issue when the prisoner shows that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it 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

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