

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

KEVIN ALEXANDER BOYCE,

2:06-cv-01944-RCT

Petitioner,

ORDER

V.

BRUNO STOLC, Warden,*

Respondent.

This court dismissed the Petitioner Kevin Boyce's petition for writ of habeas corpus on June 2, 2009. On June 14, 2010, Boyce petitioned for a certificate of appealability. A certificate of appealability is required before an appeal can be taken. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A petitioner must show that the issue to be appealed is “debatable among jurists of reason,” that different courts

* Bruno Stolc is substituted for Larry Small as the warden where the petitioner is now incarcerated, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

could resolve the issue differently, or that the question “deserve[s] encouragement to proceed further.” *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983) (superseded on other grounds by 28 U.S.C. § 2253(c)) (citations omitted).

For the reasons set forth in this court's June 2, 2009, order dismissing the petition, Boyce has failed to make a substantial showing of the denial of a constitutional right to a full and fair hearing on his Fourth Amendment motion to suppress. Moreover, Boyce has not filed a notice of appeal, and the time limit for him to do so expired nearly a year ago. For all of these reasons, Boyce's petition for a certificate of appealability is denied.

DATED this 29th day of June, 2009, at Seattle, Washington.

/s/ Richard C. Tallman
UNITED STATES CIRCUIT JUDGE
Sitting by Designation