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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LLOYD RALPH OLSON, III,

Petitioner,

v.

DAVID L. RUNNELS, Warden  
High Desert Prison,

Respondent.

NO. CV-06-2885-RHW-JPH

**ORDER DENYING  
CERTIFICATE OF  
APPEALABILITY**

Petitioner is a state prisoner represented by Conrad Petermann with a habeas corpus petition pursuant to 28 U.S.C. § 2254.

On December 24, 2009, Petitioner filed a notice of appeal (Ct. Rec. 22) of the December 16, 2009, order adopting the report and recommendation and dismissing the petition (Ct. Rec. 20). On December 24, 2009, Petitioner filed a request for a certificate of appealability (Ct. Rec. 23). On December 29, 2009, and September 27, 2010, Petitioner was advised a certificate of appealability is required to process the appeal.

A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 123 S. Ct. 1029, 1039 (2003). The controlling statute in determining whether to issue a certificate of appealability is 28 U.S.C. § 2253:

(a) In a habeas corpus proceeding or a proceeding under section

1 2255 before a district judge, the final order shall be subject to review,  
2 on appeal, by the court of appeals for the circuit in which the  
proceeding is held.

3 (b) There shall be no right of appeal from a final order in a  
4 proceeding to test the validity of a warrant to remove to another  
5 district or place for commitment or trial a person charged with a  
6 criminal offense against the United States, or to test the validity of  
such person's detention pending removal proceedings.

7 (c)(1) Unless a circuit justice or judge issues a certificate of  
8 appealability, an appeal may not be taken to the court of appeals  
9 from--

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

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

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

17 Therefore, final orders issued by a federal district court in habeas corpus  
18 proceedings are reviewable by the circuit court of appeals. 28 U.S.C. § 2253(a). In  
19 order to have final orders reviewed, Petitioner must obtain a certificate of  
20 appealability. 28 U.S.C. § 2253(c). This court will issue a certificate of  
21 appealability when a petitioner makes a substantial showing of the denial of a  
22 constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the  
23 Petitioner must establish that “reasonable jurists could debate whether (or, for that  
24 matter, agree that) the petition should have been resolved in a different manner or  
25 that the issues presented were ‘adequate to deserve encouragement to proceed  
26 further.’” *Slack v. McDaniel*, 120 S. Ct. 1595, 1603-04 (2000)(quoting *Barefoot v.*  
*Estelle*, 463 U.S. 880, 893 (1983)).

27 Petitioner makes no such showing. The court certifies that any appeal of this  
28 dismissal could not be taken in good faith. Consequently, the court certifies that  
pursuant to 28 U.S.C § 1915(a)(3), an appeal from this decision could not be taken  
in good faith, and there is no basis upon which to issue a certificate of  
appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

Accordingly, **IT IS HEREBY ORDERED:**

1. The Court **DENIES** Petitioner’s request for issuance of a certificate of  
appealability.

**ORDER DENYING CERTIFICATE OF APPEALABILITY ~ 2**

