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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MORGAN KANE,)	
)	
Petitioner,)	CASE NO. 2:07-cv-01120-RSL-JLW
)	
v.)	
)	
CLAUDE FINN, <i>et al.</i> ,)	
)	ORDER DENYING CERTIFICATE
)	OF APPEALABILITY
Respondents.)	
_____)	

This matter comes before the Court on petitioner’s “Request for Certificate of Appealability” and the Ninth Circuit’s decision in Hayward v. Marshall, ___ F.3d ___, 2010 WL 1664977 (9th Cir. Apr. 22, 2010) (en banc). Because petitioner filed his notice of appeal after April 24, 1996, his appeal is governed by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), which worked substantial changes to the law of habeas corpus. Under the amended version of 28 U.S.C. § 2253(c), a petitioner may not appeal the denial of a habeas corpus petition unless the district court or the Ninth Circuit issues a certificate of appealability identifying the particular issues that may be pursued on appeal. United States v. Asrar, 116 F.3d 1268 (9th Cir. 1997).

To obtain a certificate of appealability, the petitioner must make a substantial showing of the denial of a constitutional right. “Obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor.”

ORDER DENYING CERTIFICATE
OF APPEALABILITY

1 Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). Rather, he must demonstrate that the
2 resolution of the habeas petition is debatable among reasonable jurists or that the issues
3 presented were “adequate to deserve encouragement to proceed further.” Slack v.
4 McDaniel, 529 U.S. 473, 483-84 (2000). Where a petition is dismissed on procedural
5 grounds, the Court must determine whether “jurists of reason” would debate (1) whether
6 the petition states a valid claim of the denial of a constitutional right and (2) whether the
7 district court’s procedural ruling was correct. Slack, 529 U.S. at 484.

8 Having reviewed the record in this case, including the Report and
9 Recommendation of the Honorable John L. Weinberg, United States Magistrate Judge,
10 the Court finds that the dismissal of petitioner’s habeas petition is not debatable among
11 reasonable jurists. Petitioner’s claims should not, therefore, be the subject of an appeal.

12
13 For all of the foregoing reasons, petitioner’s request for a certificate of
14 appealability is DENIED.

15
16 Dated this 11th day of May, 2010.

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18 
19 ROBERT S. LASNIK
Chief United States District Judge