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

10 LAWRENCE REMSEN,

11 Petitioner,

No. CIV S-08-0447 FCD EFB P

12 vs.

13 ATTORNEY GENERAL OF THE
14 STATE OF CALIFORNIA, et al.,

15 Respondents.

ORDER

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

21 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the
22 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.
23 § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues
24 satisfy the required showing or must state the reasons why such a certificate should not issue.
25 Fed. R. App. P. 22(b).

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Where, as here, the petition was dismissed on procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it debatable whether the district court was correct in its procedural ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.’” Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)).


After careful review of the entire record herein, this court finds that petitioner has not satisfied the first requirement for issuance of a certificate of appealability in this case. Specifically, there is no showing that jurists of reason would find it debatable whether petitioner's application for a writ of habeas corpus was successive. Accordingly, a certificate of appealability should not issue in this action.

Finally, petitioner seeks leave to proceed in forma pauperis on appeal. Good cause appearing, petitioner's request will be granted.

Accordingly it is hereby ORDERED that:

1. Petitioner request for a certificate of appealability is denied; and
2. Petitioner's request for leave to proceed in forma pauperis on appeal is granted.

DATED: April 15, 2009.


FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE