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

DWAYNE DELUNA,

Petitioner,

No. CIV S-08-1135 WBS KJM P

vs.

LARRY E. SCRIBNER, et al.,

Respondents.

ORDER

On February 4, 2010, the court granted respondents’ motion to dismiss and dismissed petitioner’s application for writ of habeas corpus. Petitioner requests a certificate of appealability under 28 U.S.C. § 2253(c).

Where, as here, a habeas petition is 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.

1 Specifically, there is no showing that jurists of reason would find it debatable whether  
2 petitioner's habeas application is not successive under 28 U.S.C. § 2244. Accordingly, a  
3 certificate of appealability should not issue in this action.

4 IT IS SO ORDERED.

5 DATED: March 31, 2010

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7 WILLIAM B. SHUBB  
8 UNITED STATES DISTRICT JUDGE  
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