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

10 JAMES EDWARD CALDWELL,

11 Petitioner,

No. 2:09-cv-0008-JAM-JFM (HC)

12 vs.

13 JAMES WALKER,

14 Respondent.

ORDER

15 _____/
16 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of
17 this court's June 24, 2009 dismissal of his application for a writ of habeas corpus as barred by the
18 statute of limitations. Before petitioner can appeal this decision, a certificate of appealability
19 must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

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

25 Where, as here, the petition was dismissed on procedural grounds, a certificate of
26 appealability "should issue if the prisoner can show: (1) 'that jurists of reason would find it

1 debatable whether the district court was correct in its procedural ruling'; and (2) 'that jurists of
2 reason would find it debatable whether the petition states a valid claim of the denial of a
3 constitutional right.'" Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v.
4 McDaniel, 529 U.S. 473, 484 (2000)).

5 After careful review of the entire record herein, this court finds that petitioner has
6 not satisfied the first requirement for issuance of a certificate of appealability in this case.
7 Specifically, there is no showing that jurists of reason would find it debatable whether this action
8 is time-barred. Accordingly, a certificate of appealability should not issue in this action.

9 IT IS SO ORDERED.

10 DATED: August 31, 2009

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12 /s/ John A. Mendez

13 U. S. District Court Judge

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