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

11 CHRISTOPHER SCOTT,

12 Petitioner,

No. 2:09-cv-1498 JFM (HC)

13 vs.

14 RICHARD B. IVES,

ORDER<sup>1</sup>

15 Respondent.  
16 \_\_\_\_\_/

17 Petitioner, a federal prisoner proceeding pro se, has timely filed a notice of appeal  
18 of this court's January 13, 2010 denial of petitioner's motion for reconsideration of this court's  
19 July 10, 2009 dismissal of his petition writ of habeas corpus.

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).

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26 <sup>1</sup> On June 10, 2009, petitioner consented to proceed before the undersigned for all  
purposes. See 28 U.S.C. § 636(c).

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

7 After careful review of the entire record herein, this court finds that petitioner has  
8 not satisfied the first requirement for issuance of a certificate of appealability in this case.  
9 Specifically, there is no showing that jurists of reason would find it debatable whether the petition  
10 at bar is properly construed as a motion pursuant to 28 U.S.C. § 2255, rather than a petition for  
11 writ of habeas corpus pursuant to 28 U.S.C. § 2241, whether petitioner has not obtained  
12 authorization from the United States Court of Appeals for the Eighth Circuit to proceed with a  
13 second or successive § 2255 motion, or whether this court lacks jurisdiction over the action filed  
14 in this court. Accordingly, the undersigned finds that a certificate of appealability should not  
15 issue in this case.

16 IT IS SO ORDERED.

17 DATED: April 5, 2010.

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20 UNITED STATES MAGISTRATE JUDGE

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