

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

CHRISTOPHER SCOTT,

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

VS.

RICHARD B. IVES,

## ORDER

### Respondent.

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

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

<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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21 UNITED STATES MAGISTRATE JUDGE  
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