

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

ZEFERINO ORTIZ VASQUEZ,

Petitioner,

No. 2:09-cv-3141 GEB KJN P

vs.

MICHAEL MARTEL,

Respondent.

ORDER

Petitioner, a state prisoner proceeding through counsel, has timely filed a notice of appeal of this court's March 11, 2011 dismissal of his application for a writ of habeas corpus as barred by the statute of limitations. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

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).

In order to obtain a certificate of appealability where, as here, the petition was dismissed on procedural grounds,

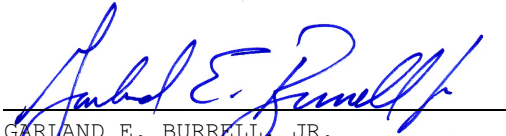
1 a habeas prisoner must make a substantial showing of the denial of
2 a constitutional right, a demonstration that, under Barefoot [v.
3 Estelle, 463 U.S. 880, 894 (1983), superseded on other grounds by
4 28 U.S.C. § 2253(c)(2)], includes showing that reasonable jurists
5 could debate whether (or, for that matter, agree that) the petition
6 should have been resolved in a different manner or that the issues
7 presented were “adequate to deserve encouragement to proceed
8 further.” Barefoot, supra, at 893, and n.4, 103 S.Ct. 3383
9 (“sum[ming] up” the “substantial showing” standard).

10 Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).

11 After careful review of the entire record herein, this court finds that petitioner has
12 not satisfied the requirement for issuance of a certificate of appealability in this case.
13 Specifically, there is no showing that jurists of reason would find it debatable whether the instant
14 petition is barred by the statute of limitations. Accordingly, a certificate of appealability should
15 not issue in this action.

16 IT IS SO ORDERED.

17 Dated: March 29, 2011

18 
19 GARIAND E. BURRELL, JR.
20 United States District Judge
21
22
23
24
25
26