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

EULALIO GUERRERO, II,

Petitioner,

No. CIV S-10-905 JAM DAD P

vs.

JAMES A. YATES,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding with counsel, has timely filed a notice of appeal of this court's April 4, 2011 dismissal of his application for a writ of habeas corpus. The court determined that the habeas petition was not filed before the expiration of the one-year statute of limitations and that petitioner was not entitled to equitable tolling. 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).

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Where, as here, the petition was 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)), rev’d in part on other grounds by 273 F.3d 826 (9th Cir. 2001).

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. Specifically, there is no showing that jurists of reason would find it debatable as to whether petitioner is entitled to equitable tolling. Accordingly, a certificate of appealability should not issue in this action.

IT IS SO ORDERED.

DATED: May 26, 2011

/s/ John A. Mendez
UNITED STATES DISTRICT JUDGE