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

DIRK JA'ONG BOUIE,

Petitioner,

v.

No. 2:12-cv-01221 MCE JFM (HC)

BOARD OF PAROLE HEARINGS,

Respondent.

<u>ORDER</u>

Petitioner has filed a request for reconsideration of this court's order filed August 6, 2013, affirming the order of the magistrate judge filed July 10, 2013. ECF No. 29. On September 6, 2013, respondent filed a motion for enlargement of time to respond to petitioner's motion for reconsideration. ECF No. 30. On October 9, 2013, respondent filed an opposition to petitioner's motion for reconsideration. ECF No. 34. Good cause appearing, respondent's motion for enlargement of time is granted, and respondent's opposition is deemed timely filed. Thereafter, on October 16, 2013, Petitioner submitted his reply. ECF No. 35. All the papers submitted in support of, and in opposition to, Petitioner's reconsideration request have been reviewed and considered by the Court.

Petitioner has failed to demonstrate any new or different facts or circumstances which did not exist or were not shown upon the prior motion. See E.D. Local Rule 230(j). Accordingly, the motion for reconsideration is denied.

Petitioner has also timely filed a notice of appeal of this court's August 6, 2013, dismissal of his application for a writ of habeas corpus for failure to exhaust state remedies. ECF No. 31. 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).

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)).

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 whether petitioner has exhausted state remedies. Accordingly, a certificate of appealability should not issue in this action.

IT IS SO ORDERED.

Dated: October 17, 2013

22

20

21

23

24

25

26

27

28

MORRISON C. ENGLAND, JR., CHIEF JUDGE

UNITED STATES DISTRICT COURT