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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MILROD OLIC,

Petitioner,

v.

WARDEN JOE A. LIZARRAGA,

Respondent.

No. 2:14-cv-2120 KJM GGH P
Court of Appeals Docket # 17-15543
ORDER

Petitioner, a state prisoner proceeding pro se, filed this action seeking relief under 28 U.S.C. § 2254. On March 7, 2017, this court dismissed the action without prejudice. Petitioner has appealed that decision, and the United States Court of Appeals for the Ninth Circuit has remanded this action to this court for the limited purpose of granting or denying a certificate of appealability for petitioner’s appeal.

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Rule 11, 28 U.S.C. foll. § 2254. In the present context, the court should only issue a certificate of appealability if petitioner shows (1) “that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right” and (2) “that jurists of reason would find it debatable whether the . . . court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist

1 could not conclude either that the district court erred in dismissing the petition or that the
2 petitioner should be allowed to proceed further.” *Id.*

3 The instant action was dismissed without prejudice on the ground that *Nettles v.*
4 *Grounds*, 830 F.3d 922 (9th Cir. 2015) (en banc) bars consideration of petitioner’s claims as
5 habeas corpus claims, and petitioner declined to elect to proceed with this action as a civil rights
6 action under 42 U.S.C. § 1983. *See* ECF No. 63 at 2; ECF No. 65. Petitioner has not shown it is
7 debatable whether this court abused its discretion in finding petitioner’s claims not cognizable in
8 habeas corpus proceedings. For that reason, this court declines to issue a certificate of
9 appealability.

10 In accordance with the above, IT IS HEREBY ORDERED that:

- 11 1. This court declines to issue a certificate of appealability; and
- 12 2. The Clerk of the Court is directed to serve a copy of this order on the United States
13 Court of Appeals for the Ninth Circuit.

14 DATED: April 11, 2017

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18 UNITED STATES DISTRICT JUDGE
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