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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RENO RIOS,  
  
                                Petitioner,  
  
                                v.  
  
WARDEN, Kern Valley State Prison,  
  
                                Respondent.

District Court No. 2:15-cv-00658 AC P  
Ninth Circuit Court of Appeals No. 15-16227

ORDER

The Ninth Circuit Court of Appeals has remanded this matter to this court for the limited purpose of determining whether a certificate of appealability should issue.

On April 23, 2015, this court<sup>1</sup> dismissed petitioner’s application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, for lack of jurisdiction. See Rule 4 of the Rules Governing Section 2254 Cases. The court found that it was without jurisdiction to consider petitioner’s challenge to the \$10,000 restitution fine imposed by the superior court at petitioner’s 1990 sentencing. See ECF No. 8 at 2, citing Bailey v. Hill, 599 F.3d 976, 982 (9th Cir. 2010) (Section 2254 “does not confer jurisdiction over a state prisoner’s in-custody challenge to a restitution  
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<sup>1</sup> Petitioner consented to the jurisdiction of the undersigned Magistrate Judge for all purposes, pursuant to 28 U.S.C. § 636(c), and Local Rule 305(a). See ECF No. 6.

1 order imposed as part of a criminal sentence”). Accordingly, judgment was entered against  
2 petitioner. See ECF No. 9.

3 No appeal may be taken from a final district court order in a Section 2254 proceeding if a  
4 certificate of appealability has not issued. See 28 U.S.C. § 2253(c); see also Fed. R. App. P.  
5 22(b)(1). A certificate of appealability may issue “only if the applicant has made a substantial  
6 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).


7 In the instant case, this court did not reach petitioner’s federal constitutional claims that  
8 the challenged fine violated his Eighth and Fourteenth Amendment rights because the petition  
9 was denied for lack of jurisdiction. “[W]hen the district court denies a habeas petition on  
10 procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA  
11 should issue (and an appeal of the district court’s order may be taken) if the prisoner shows, at  
12 least, that jurists of reason would find it debatable whether the petition states a valid claim of the  
13 denial of a constitutional right, and that jurists of reason would find it debatable whether the  
14 district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 478 (2000).

15 Neither threshold requirement identified in Slack is met for issuance of a certificate of  
16 appealability in the instant case. Reasonable jurists would not debate whether petitioner’s  
17 challenge to the subject fine asserts a cognizable federal constitutional claim, or that this court  
18 erred in finding it lacked jurisdiction to consider such claim. Therefore, the undersigned declines  
19 to issue a certificate of appealability.

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. This court declines to issue the certificate of appealability referenced in 28 U.S.C.  
22 § 2253; and  
23 2. The Clerk of Court shall confirm that the record in this case has been transmitted to the  
24 Court of Appeals, see ECF No. 12.

25 DATED: August 7, 2015

26   
27 ALLISON CLAIRE  
28 UNITED STATES MAGISTRATE JUDGE