

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
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES E. TRUSCHKE, JR.,
Petitioner,
v.
SHASTA COUNTY SUPERIOR COURT,
et al.,
Respondents.

No. 2:15-cv-0702 CKD P

ORDER

Petitioner, a state prisoner proceeding pro se, has appealed the June 24, 2015 dismissal of his petition for untimeliness. As the order of dismissal did not address whether a certificate of appealability should issue, the court does so here.¹

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). Where 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

¹ Petitioner has consented to this court’s jurisdiction to conduct all proceedings in this action. (ECF No. 6.)

1 v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484
2 (2000)).

3 After review of the record herein, this court finds that petitioner has not satisfied the
4 requirement for issuance of a certificate of appealability in this case. Accordingly, a certificate of
5 appealability will not issue in this action.

6 After the judgment of dismissal was entered on June 24, 2015, petitioner filed two
7 motions. (ECF No. 16 & 18.) As this case is closed, the Clerk of Court will be directed to
8 disregard these motions, and no orders will issue in response to future filings.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The court declines to issue a certificate of appealability pursuant to 28 U.S.C. § 2253;
11 and
12 2. The Clerk of Court is directed to disregard petitioner's motions at ECF Nos. 16 & 18,
13 as this action was closed on June 24, 2015.

14 Dated: August 10, 2015

15 
16 CAROLYN K. DELANEY
17 UNITED STATES MAGISTRATE JUDGE
18
19
20

21 2 / cudg0691.coa.pro
22
23
24
25
26
27
28