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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 FLORENCIO VALLEJO,) No. C 07-4536 JSW (PR)
9 Petitioner,)
10 vs.) **ORDER DENYING**
11 ROSEANNE CAMPBELL, Warden,) **CERTIFICATE OF**
12 Respondent.) **APPEALABILITY**
13) **(Docket nos. 16, 17)**

14
15 Petitioner, a prisoner of the State of California, filed a *pro se* 28 U.S.C. § 2254
16 petition for a writ of habeas corpus. In an order dated December 15, 2008, this Court
17 dismissed the petition as untimely (docket no. 14). Petitioner has filed a notice of appeal
18 (docket no. 16) and a motion seeking a certificate of appealability (docket no. 17).

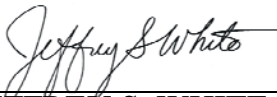
19 A judge shall grant a COA “only if the applicant has made a substantial showing
20 of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “Determining whether a
21 COA should issue where the petition was dismissed on procedural grounds has two
22 components, one directed at the underlying constitutional claims and one directed at the
23 district court’s procedural holding.” *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000).
24 “When the district court denies a habeas petition on procedural grounds without reaching
25 the prisoner’s underlying constitutional claim, a COA should issue when the prisoner
26 shows, at least, that jurists of reason would find it debatable whether the petition states a
27 valid claim of the denial of a constitutional right and that jurists of reason would find it
28 debatable whether the district court was correct in its procedural ruling.” *Id.* at 484; *see*
James v. Giles, 221 F.3d 1074, 1077 (9th Cir. 2000). As each of these components is a

1 “threshold inquiry,” the federal court “may find that it can dispose of the application in a
2 fair and prompt manner if it proceeds first to resolve the issue whose answer is more
3 apparent from the record and arguments.” *Slack*, 529 U.S. at 485. Supreme Court
4 jurisprudence “allows and encourages” federal courts to first resolve the procedural
5 issue. *See id.*

6 Petitioner has not established that “jurists of reason would find it debatable
7 whether the district court was correct in its procedural ruling.” *Id.* at 484. Accordingly,
8 the request for a certificate of appealability is DENIED (docket no. 17). The Clerk of
9 Court shall forward this order, along with the case file, to the United States Court of
10 Appeals for the Ninth Circuit. *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir.
11 1997).

12 IT IS SO ORDERED.

13 DATED: May 26, 2009

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16 JEFFREY S. WHITE
17 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5
6 FLORENCIO P VALLEJO,
7 Plaintiff,

Case Number: CV07-04536 JSW

CERTIFICATE OF SERVICE

8 v.


9 DERAL G ADAMS et al,
10 Defendant.
11 _____/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on May 26, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
17 receptacle located in the Clerk's office.

18 Florencio P. Vallejo P-71999
19 Corcoran State Prison
20 A-3-173 L
P.O. Box 5242
Corcoran, CA 93212

21 Dated: May 26, 2009
22


23 Richard W. Wieking, Clerk
24 By: Jennifer Ottolini, Deputy Clerk
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