

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

ALEJANDRO F. MICHEL,) No. C 08-1724 JSW (PR)
Petitioner,)
vs.)
J. WALKER, Warden,)**ORDER DENYING
CERTIFICATE OF
APPEALABILITY**
Respondent.)
(Docket no. 12)

Petitioner, a prisoner of the State of California, filed a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254 . In an order dated March 17, 2009, this Court dismissed the petition as untimely (docket no. 10). Petitioner has filed a notice of appeal and a motion seeking a certificate of appealability (docket no. 10).

A judge shall grant a COA “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “Determining whether a COA should issue where the petition was dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one directed at the district court’s procedural holding.” *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it 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

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

Petitioner has not established that “jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* at 484. Accordingly, the request for a certificate of appealability is DENIED (docket no. 12). The Clerk of Court shall forward this order, along with the case file, to the United States Court of Appeals for the Ninth Circuit. *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).

IT IS SO ORDERED.

DATED: May 26, 2009

Jeffrey S. White

JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ALEJANDRO F. MICHEL,

Case Number: CV08-01724 JSW

Plaintiff,

CERTIFICATE OF SERVICE

V.

WILLIAM T. SULLIVAN et al.

Defendant.

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

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

Alejandro F. Michel
T86169
CSP-Sacramento
P.O. Box 290066
Represa, CA 95671

Dated: May 26, 2009

Jennifer Ottolini
Richard W. Wierking, Clerk
By: Jennifer Ottolini, Deputy Clerk

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