

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

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

DAVID O. ALLEN,)	No. C 08-4080 JSW (PR)
)	
Petitioner,)	
)	ORDER DENYING CERTIFICATE OF
vs.)	APPEALABILITY
)	
PAM AHLIN, Executive Director,)	
)	
Respondent.)	(Docket No. 23)
)	

Petitioner, detained at Coalinga State Hospital, filed a habeas corpus petition pursuant to 28 U.S.C. § 2242 challenging the constitutionality of his detention as a sexually violent predator under the amendments to the Sexually Violent Predator Act in the Sexual Predator Punishment and Control Act of 2006. Respondent’s motion to dismiss the petition was granted on March 9, 2010.

On April 9, 2010, petitioner filed a notice of appeal. The Clerk processed the appeal without a ruling on a certificate of appealability (“COA”). On August 16, 2010, the Ninth Circuit remanded the case for the limited purpose of a decision on whether to grant or deny a COA.

A judge shall grant a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate must indicate which issues satisfy this standard. *See id.* § 2253(c)(3). “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,

1 at least, that jurists of reason would find it debatable whether the petition states a valid
2 claim of the denial of a constitutional right and that jurists of reason would find it
3 debatable whether the district court was correct in its procedural ruling.” *Slack v.*
4 *McDaniel*, 529 U.S. 473, 484-85 (2000). For the reasons set out in the ruling on the
5 motion, jurists of reason would not find debatable or wrong that the motion to dismiss
6 was meritorious. Petitioner’s request for a certificate of appealability is DENIED.

7 The clerk shall transmit the file, including a copy of this order, to the Ninth Circuit.
8 *See* Fed. R. App. P. 22(b); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).
9 Petitioner may then ask the Ninth Circuit to issue the certificate, *see* R.App.P. 22(b)(1), or
10 if he does not, the notice of appeal will be construed as such a request, *see* R.App.P.
11 22(b)(2).

12 This order terminates docket number 23.

13 IT IS SO ORDERED.

14 DATED: November 1, 2010



15 _____
16 JEFFREY S. WHITE
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 DAVID OLIVER ALLEN,
6 Plaintiff,
7

Case Number: CV08-04080 JSW

CERTIFICATE OF SERVICE

8 v.

9 PAM AHLIN et al,
10 Defendant.
_____ /

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

13 That on November 1, 2010, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 David Oliver Allen
18 P.O. Box 5003 Unit #1
19 K39029
Coalinga, CA 93210

20 Dated: November 1, 2010

Jennifer Ottolini
21 Richard W. Wieking, Clerk
22 By: Jennifer Ottolini, Deputy Clerk
23
24
25
26
27
28