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

NORMAN PATTERSON,	)	No. C 08-5423 MMC (PR)
	)	
Petitioner,	)	<b>ORDER DENYING CERTIFICATE OF</b>
	)	<b>APPEALABILITY</b>
v.	)	
	)	<b>(Docket No. 24)</b>
LARRY SMALL, Warden,	)	
	)	
Respondent.	)	
_____	)	

On December 2, 2008, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 6, 2010, respondent’s motion to dismiss the petition as untimely was granted, judgment was entered in respondent’s favor, and the case was closed. On October 21, 2010, the Court granted petitioner’s first request for an extension of time to file a notice of appeal and instructed petitioner to file the notice of appeal within 14 days, i.e., by November 4, 2010. On May 10, 2011, the Court denied as untimely petitioner’s second request for an extension of time to file a notice of appeal.

Petitioner has now filed a notice of appeal and request for a certificate of appealability, wherein petitioner argues, for the first time, his appellate counsel on direct review failed to fully exhaust his claims in the California Supreme Court. According to

1 petitioner, because counsel failed to “perfect” petitioner’s direct appeal (see App. for COA at  
2 4), petitioner was forced to return to state court to exhaust his claims, preventing him from  
3 bringing his federal habeas petition within the one-year time limit.

4 The Ninth Circuit has stated, however, that counsel’s failure to perfect an appeal from  
5 a conviction, without more, is not an “extraordinary circumstance” warranting equitable  
6 tolling. Randle v. Crawford, 604 F.3d 1047, 1058 (9th Cir. 2010). Irrespective of whether  
7 his counsel failed to perfect a direct appeal, petitioner was able to pursue state post-  
8 conviction habeas proceedings pursuant to Cal. Const., art. I, § 11. As stated in the Court’s  
9 August 6, 2010 order of dismissal, petitioner unreasonably delayed in pursuing those  
10 proceedings.


11 In sum, petitioner has not shown “that jurists of reason would find it debatable  
12 whether the district court was correct in its procedural ruling.” See Slack v. McDaniel, 529  
13 U.S. 473, 484 (2000). Accordingly, the request for a certificate of appealability is hereby  
14 DENIED.

15 The Clerk shall forward this order, along with the case files in 08-5423 MMC (PR)  
16 and 07-1182 MMC (PR), to the United States Court of Appeals for the Ninth Circuit, from  
17 which petitioner may also seek a certificate of appealability. See United States v. Asrar, 116  
18 F.3d 1268, 1270 n.2 (9th Cir. 1997).

19 This order terminates Docket No. 24.

20 IT IS SO ORDERED.

21 DATED: May 20, 2011

22   
23 MAXINE M. CHESNEY  
24 United States District Judge