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

DEAN A. SCHWARTZMILLER,

C 10-0057 JSW (PR)

Petitioner,

**ORDER DENYING
CERTIFICATE OF
APPEALABILITY**

vs.

KENNETH CLARK, Warden,

Respondent.

This is a habeas corpus case filed pro se by a state prisoner pursuant to 28 U.S.C. § 2254. On December 23, 2011, the petition was denied on the grounds of procedural default because the state courts held that both of his claims were forfeited when petitioner failed to make a contemporaneous objection on the grounds he relied upon in the appeal and in the instant petition. *See Inthavong v. Lamarque*, 420 F.3d 1055, 1058 (9th Cir. 2005) (affirming denial of petition for procedural default based on California's contemporaneous objection rule); *Davis v. Woodford*, 384 F.3d 628, (9th Cir. 2004) (holding objection on evidentiary ground insufficient to preserve constitutional claim, which therefore was procedurally barred on federal habeas); *Paulino v. Castro*, 371 F.3d 1083, 1092–93 (9th Cir. 2004) (holding petitioner barred from challenging jury instruction for failure to object at trial); *Vansickel v. White*, 166 F.3d 953, 957–58 (9th Cir. 1999) (holding petitioner barred from challenging denial of peremptory challenges for failure to contemporaneously object). A certificate of appealability was denied in the same order.

About a year later, Petitioner filed a motion for reconsideration, which was denied

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on March 22, 2013. Petitioner appealed the order denying reconsideration, and the Court of Appeals issued a limited remand order directing this Court to determine whether a certificate of appealability should be granted. No reasonable jurist would disagree that Petitioner presented no grounds for reconsidering the denial of the petition. Therefore, a certificate of appealability is DENIED.

IT IS SO ORDERED.

DATED: May 13, 2013



JEFFREY S. WHITE
United States District Judge

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

5 DEAN A. SCHWARTZMILLER,
6 Plaintiff,

Case Number: CV10-00057 JSW
CERTIFICATE OF SERVICE

7 v.


8 KENNETH CLARK et al,
9 Defendant.
10 _____/

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

13 That on May 13, 2013, 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 Dean A. Schwartzmiller
18 F67490
19 P.O. Box 5246
20 Corcoran, CA 93212

21 Dated: May 13, 2013


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