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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 UNITED STATES OF AMERICA,
9 Plaintiff,

No. CR 09-0624 SI
No. C 10-5203 SI

10 v.

**ORDER DENYING CERTIFICATE OF
APPEALABILITY**

11 BRYAN KEITH RICHARDSON,
12 Defendant.
13 _____/

14 Defendant filed notice of appeal of the judgment entered on July 6, 2011, denying his 28 U.S.C.
15 § 2255 motion. In his Section 2255 motion, defendant argued that if the Court had considered United
16 States Sentencing Guideline 5G1.3, it should or would have sentenced him to have his state and federal
17 sentences run concurrently. The Court enforced defendant's plea agreement, in which he waived the
18 right to appeal "any aspect" of his sentence or file "any collateral attack" on his sentence, except for a
19 claim of ineffective assistance of counsel. The Court also noted that it would have denied defendant's
20 motion on the merits, because the Court, in imposing a consecutive sentence, exercised the discretion
21 specifically permitted by the Guidelines.

22 This case is not a case in which "jurists of reason would find it debatable whether the petition
23 states a valid claim of the denial of a constitutional right and that jurists of reason would find it
24 debatable whether the district court was correct in its procedural [rulings]." *See Slack v. McDaniel*, 529
25 U.S. 473, 484 (2000); *United States v. Zuno-Arce*, 339 F.3d 886, 889 (9th Cir.2003). Thus, defendant
26 has not made a substantial showing of denial of constitutional right. *See* 28 U.S.C. § 2253(c).

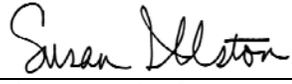
27 Accordingly, the Court DENIES petitioner's request for a certificate of appealability. (Docket
28 No. 54). The denial of the certificate of appealability is without prejudice to petitioner seeking a

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certificate from the United States Court of Appeals for the Ninth Circuit. The clerk shall send a copy of this order to the United States Court of Appeal for inclusion in the case file.

IT IS SO ORDERED.

Dated: August 19, 2011



SUSAN ILLSTON
United States District Judge