

United States District Court
For the Northern District of California

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

MILAN PAKES,

No. CV 11-05284 CRB

Petitioner,

CERTIFICATE OF APPEALABILITY

v.

P.D. BRAZELTON,

Respondent.

Now before the Court is Pake’s request for an issuance of a certificate of appealability (“COA”). A judge shall grant a COA “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). Indeed, “a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.” Miller-El v. Cockrell, 537 U.S. 322, 338 (2003).

Here, the Court concludes that reasonable jurists could debate two of the seven issues for which Pake seeks a COA. A COA is granted as to the following issues:

1 (1) Was Pake deprived of the effective assistance of counsel under the Sixth and Fourteenth
2 Amendments when his trial attorney agreed to the stipulation that he reasonably believed that
3 he would be sent to prison if he was apprehended by the police?

4 (2) Was Pake deprived of a fair trial under the Fifth, Sixth and Fourteenth Amendments due
5 to the cumulative prejudice from the several errors that occurred at this trial?

6 The Court GRANTS a certificate of appealability as to those two claims.

7 **IT IS SO ORDERED.**

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10 Dated: August 26, 2013

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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE