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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL E. SPENCER,

Petitioner,

vs.

RICHARD KIRKLAND, Warden,

Respondent.

No. C 05-4338 PJH (PR)

**ORDER DENYING
CERTIFICATE OF
APPEALABILITY AND
MOTION FOR
APPOINTMENT OF
COUNSEL**

This is a habeas case under 28 U.S.C. § 2254 filed pro se by a state prisoner. The court denied the petition in a ruling entered on March 30, 2009. Petitioner has filed a notice of appeal, a motion for a certificate of appealability, and a motion for appointment of counsel.

A petitioner may not appeal a final order in a federal habeas corpus proceeding without first obtaining a certificate of appealability (formerly known as a certificate of probable cause to appeal). See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). 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). "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*, 120 S.Ct. 1595, 1604 (2000).

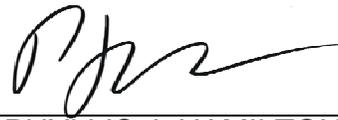
For the reasons set out in the order denying the petition, jurists of reason would not find the result debatable or wrong. Petitioner's request for a certificate of appealability

1 (document number 17 on the docket) is **DENIED**. His motion for appointment of counsel,
2 which also is contained in document 17, is **DENIED** without prejudice to renewing it before
3 the Court of Appeals.

4 The clerk shall transmit the file, including a copy of this order, to the Court of
5 Appeals. See Fed. R.App.P. 22(b); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir.
6 1997). Petitioner may then ask the Court of Appeals to issue the certificate, see R.App.P.
7 22(b)(1), or if he does not, the notice of appeal will be construed as such a request, see
8 R.App.P. 22(b)(2).

9 **IT IS SO ORDERED.**

10 Dated: May 12, 2009.



PHYLLIS J. HAMILTON
United States District Judge