

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

3 DOCK McNEELY,

No. C 12-2599 CW (PR)

4 Petitioner,

Ninth Circuit Case No. 12-16559

5 v.

6 KEVIN CHAPPELL, Warden,

ORDER DENYING CERTIFICATE OF
APPEALABILITY; DENYING LEAVE TO
PROCEED IN FORMA PAUPERIS ON
APPEAL; DIRECTING CLERK TO
TRANSMIT FILE TO NINTH CIRCUIT

7 Respondent.
8 _____/

(Docket no. 12)

9
10 Petitioner, a state prisoner incarcerated at San Quentin State
11 Prison, filed the present pro se petition for a writ of habeas
12 corpus under 28 U.S.C. § 2254. Petitioner argues in the petition
13 that his arrest and current incarceration violate the Ninth
14 Circuit's ruling in McNeely v. Blanas, 336 F.3d 822 (9th Cir.
15 2003), which found he had been denied his constitutional right to a
16 speedy trial, reversed the denial of his habeas petition by the
17 United States District Court for the Eastern District of
18 California, and ordered his immediate release from custody with
19 prejudice to re-prosecution of the same criminal charges.

20 On May 25, 2012, this Court dismissed the present petition,
21 finding that it is duplicative of McNeely v. Chappell, C 12-1483 CW
22 (PR), a habeas petition filed by Petitioner in this district on
23 March 23, 2012, which the Court ordered transferred to the Eastern
24 District on April 9, 2012. Docket no. 5.

25 Petitioner has filed a Notice of Appeal and a request to
26 proceed in forma pauperis (IFP) on appeal. The Ninth Circuit has
27 remanded the case to this Court for the limited purpose of granting
28 or denying a certificate of appealability (COA). Docket no. 16.

"Determining whether a COA should issue where the petition was

1 dismissed on procedural grounds has two components, one directed at
2 the underlying constitutional claims and one directed at the
3 district court's procedural holding." Slack v. McDaniel, 529 U.S.
4 473, 484-85 (2000). "When the district court denies a habeas
5 petition on procedural grounds without reaching the prisoner's
6 underlying constitutional claim, a COA should issue when the
7 prisoner shows, at least, that jurists of reason would find it
8 debatable whether the petition states a valid claim of the denial
9 of a constitutional right and that jurists of reason would find it
10 debatable whether the district court was correct in its procedural
11 ruling." Id. at 484. As each of these components is a "threshold
12 inquiry," the federal court "may find that it can dispose of the
13 application in a fair and prompt manner if it proceeds first to
14 resolve the issue whose answer is more apparent from the record and
15 arguments." Id. at 485.

16 For the reasons discussed above, Petitioner has not shown that
17 jurists of reason would find it debatable whether the Court was
18 correct in its procedural ruling that the petition is duplicative
19 of the petition transferred to the Eastern District. Accordingly,
20 a COA is DENIED and Petitioner's request to proceed IFP on appeal
21 is DENIED. Additionally, Petitioner's request that he be allowed
22 to proceed on appeal in this matter without a COA is DENIED.

23 Docket no. 12.

24 The Clerk of the Court shall transmit a copy of this Order,
25 together with the case file, to the Ninth Circuit.

26 This Order terminates Docket no. 12.

27 IT IS SO ORDERED.

28 Dated: 8/29/2012


CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE