

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\*E-FILED - 9/11/08\*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

KRISTIN RAY HIMMELBERGER, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 A.A. LAMARQUE, )  
 )  
 Respondent. )

No. C 00-20198 RMW (PR)  
**ORDER DENYING CERTIFICATE  
OF APPEALABILITY**  
  
(Docket No. 64)

Petitioner, a California prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was denied on its merits. Petitioner has filed a motion for a certificate of appealability. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

“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 (2000).

Except for substituting the word “constitutional” for the word “federal,” section 2253(c)(2) codified the standard announced by the Supreme Court in Barefoot v. Estelle, 463

1 U.S. 880, 892-93 (1983). Slack, 529 U.S. at 475. In Barefoot, the court explained that “a  
2 substantial showing of the denial of [a] federal right” means that a petitioner “must demonstrate  
3 that the issues are debatable among jurists of reason; that a court could resolve the issues [in a  
4 different manner], or that the questions are adequate to deserve encouragement to proceed  
5 further.” Barefoot, 463 U.S. at 893 n.4 (citations and internal quotations omitted). Any doubts  
6 about whether the Barefoot standard has been met must be resolved in petitioner’s favor.  
7 Lambright v. Stewart, 220 F.3d 1022, 1024-25 (9th Cir. 2000).

8 The court denied the instant petition after careful consideration of the merits. The court  
9 found no violation of petitioner’s federal constitutional rights in the underlying state court  
10 proceedings. Petitioner has failed to demonstrate that jurists of reason would find it debatable  
11 whether this court was correct in its ruling. Accordingly, the court will DENY petitioner’s  
12 request for a certificate of appealability.

13 The Clerk shall serve notice of this order forthwith to the United States Court of Appeal  
14 and to the parties. See Fed. R. App. P. 24(a).

15 This order terminates docket number 64.

16 IT IS SO ORDERED.

17 DATED: 9/10/08

  
\_\_\_\_\_  
RONALD M. WHYTE  
United States District Judge