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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

| | | |
|-----------------------|---|------------------------------|
| ANTONIO LEYBA, |) | No. C 05-01744 JF (PR) |
| |) | |
| Petitioner, |) | ORDER DENYING MOTION FOR A |
| vs. |) | CERTIFICATE OF APPEALABILITY |
| |) | |
| |) | |
| D.L. RUNNELS, Warden, |) | |
| |) | |
| Respondent. |) | (Docket No. 35) |
| _____ |) | |

On August 5, 2009, the Court denied this pro se petition for writ of habeas corpus on the merits and entered judgment in favor of Respondent. On August 28, 2009, Petitioner filed a notice of appeal and a motion for a certificate of appealability, (Docket No. 35.).

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).

Order Denying Motion for COA
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1 “Where a district court has rejected the constitutional claims on the merits, the
2 showing required to satisfy § 2253(c) is straightforward: the petitioner must
3 demonstrate that reasonable jurists would find the district court’s assessment of the
4 constitutional claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484
5 (2000). The Court denied the instant habeas petition after careful consideration of the
6 merits. The Court found no violation of Petitioner’s federal constitutional rights in the
7 underlying state court proceedings. Petitioner has failed to demonstrate that jurists of
8 reason would find it debatable whether this Court was correct in its ruling.
9 Accordingly, Petitioner’s request for a certificate of appealability (Docket No. 35) is
10 DENIED.

11 The clerk shall forward to the court of appeals the case file with this order. See
12 Fed. R. App. P. 22(b).

13 This order terminates Docket No. 35.

14 IT IS SO ORDERED.

15 DATED: 1/4/10


16 JEREMY FOGEL
17 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ANTONIO LEYBA,

Petitioner,

v.

D. L. RUNNELS, Warden,

Respondent.

Case Number: CV05-01744 JF

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 1/5/10, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Antonio Leyba T-28485
High Desert State Prison
PO Box 33
Susanville, CA 96127

Dated: 1/5/10

Richard W. Wieking, Clerk