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E-FILED - 12/15/08

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

LAMONTE BEVERLY,)	No. C 05-2507 RMW (PR)
)	
Petitioner,)	ORDER DENYING CERTIFICATE
)	OF APPEALABILITY
vs.)	
)	
BEN CURRY,)	
)	
Respondent.)	(Docket Nos. 40, 41)

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, 484 (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 Petitioner has filed a request to proceed in forma pauperis on appeal (Docket No. 41).
16 Because the appeal is taken in good faith and because of petitioner’s lack of funds, see 28 U.S.C.
17 § 1915(a)(3), petitioner’s request to appeal in forma pauperis is hereby GRANTED.

18 This order terminates Docket Nos. 40 and 41.

19 IT IS SO ORDERED.

20 DATED: 12/12/08


21 RONALD M. WHYTE
22 United States District Judge
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