

E-Filed 2/23/2010

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

CHAD RHODES,

Petitioner,

v.

ROBERT KIRKLAND, Warden,

Respondent.

Case Number C 06-5252 JF

ORDER¹ DENYING MOTION FOR
CERTIFICATE OF APPEALABILITY;
AND GRANTING MOTION TO
PROCEED ON APPEAL IN FORMA
PAUPERIS

On January 19, 2010, this Court denied the petition for writ of habeas corpus sought by Petitioner Chad Rhodes ("Petitioner") pursuant to 28 U.S.C. § 2254, and entered judgment for Respondent. On January 25, 2010, Petitioner filed a motion for a certificate of appealability. On January 26, 2010, Petitioner filed a motion to proceed on appeal *in forma pauperis*.

A petitioner may not appeal a final order in a federal habeas corpus proceeding without first obtaining a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A court may issue 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). A certificate of appealability must indicate which

¹ This disposition is not designated for publication in the official reports.

specific issues satisfy this requirement. 28 U.S.C. § 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*, 529 U.S. 473, 484 (2000).


This Court carefully considered the grounds for relief raised in the petition, and concluded that Petitioner had failed to demonstrate a denial of a constitutional right. The Court is not persuaded that reasonable jurists would find this conclusion debatable or wrong. Accordingly, Petitioner’s motion for a certificate of appealability is DENIED.

Petitioner’s motion for leave to proceed on appeal *in forma pauperis* is GRANTED.

IT IS SO ORDERED.

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

DATED: 2/23/2010


JEREMY FOGEL
United States District Judge