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NOT FOR CITATION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

| | | |
|----------------------|---|------------------------|
| VICTOR HERNANDEZ, |) | No. C 08-01154 JF (PR) |
| |) | |
| Petitioner, |) | ORDER DENYING MOTION |
| |) | FOR CERTIFICATE OF |
| vs. |) | APPEALABILITY |
| |) | |
| JAMES YATES, Warden, |) | |
| |) | |
| Respondent. |) | (Docket No. 23) |

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction. Respondent’s motion to dismiss the petition as untimely was granted. Petitioner has filed a notice of appeal and motion for a certificate of appealability, (Docket No. 23).

Petitioner has not shown “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, the motion for a certificate of appealability is DENIED.

The Clerk shall forward this order, along with the case file, to the United States

1 Court of Appeals for the Ninth Circuit, from which Petitioner may also seek a certificate
2 of appealability. See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997).

3 This order terminates Docket Nos. 23.

4 IT IS SO ORDERED.

5 DATED: 10/15/09
6 _____


7 _____
8 JEREMY FOCHEL
9 United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VICTOR HERNANDEZ,
Petitioner,

Case Number: CV08-01154 JF

CERTIFICATE OF SERVICE

v.

JAMES YATES, Warden,
Respondent.

_____/

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 10/22/09, 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.

Victor Hernandez K-31659
Pleasant Valley State Prison
P.O. Box 8504
Fac D-3-128-L
Coalinga, CA 93210

Dated: 10/22/09

Richard W. Wieking, Clerk