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E-FILED - 3/18/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMAINE V. PAIGE,)	No. C 08-3963 RMW (PR)
)	
Petitioner,)	ORDER DENYING CERTIFICATE
)	OF APPEALABILITY; GRANTING
vs.)	LEAVE TO FILE IN FORMA
)	PAUPERIS
SCOTT M. KERNAN, et al.,)	
)	(Docket No. 11)
Respondents.)	
)	

Petitioner, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner filed an earlier habeas action with this court, in case no. C 99-2870 MJJ (PR), challenging the same conviction and sentence as in the instant petition. This court denied petitioner’s earlier habeas petition on the merits on January 3, 2002. The United States Court of Appeals denied a certificate of appealability on June 17, 2002. Thereafter, on September 29, 2008, the court dismissed the instant petition as a second or successive petition pursuant to 28 U.S.C. § 2244(b). Petitioner filed a notice of appeal on October 20, 2008.

Upon the filing of a notice of appeal and a request for a certificate of appealability (COA), the district court shall indicate which specific issue or issues satisfy the standard for issuing a certificate, or state its reasons why a certificate should not be granted. See United

1 States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997) (citing 28 U.S.C. § 2253(c)(3)).

2 The court found that the instant petition was a second or successive petition because the
3 instant petition challenged the same conviction and sentence as the earlier petition, in case no. C
4 99-2870 MJJ (PR), which was denied on the merits. The court concludes that petitioner has not
5 shown “that jurists of reason would find it debatable whether the petition states a valid claim of
6 the denial of a constitutional right and that jurists of reason would find it debatable whether the
7 district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).

8 Accordingly, petitioner’s request for a certificate of appealability is DENIED. Good
9 cause appearing, petitioner’s request for leave to proceed in forma pauperis on appeal is
10 GRANTED. (Docket No. 11.)

11 The clerk shall transmit the file, including a copy of this order, to the Court of Appeals.
12 See Fed. R. App. P. 22(b).

13 IT IS SO ORDERED.

14 DATED: 3/16/09


RONALD M. WHYTE
United States District Judge