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

MICHAEL L. OVERTON,

Petitioner,

v.

WARDEN, et al.,

Respondents.

) No. C 14-01859 EJD (PR)

) ORDER DENYING CERTIFICATE OF  
) APPEALABILITY

\_\_\_\_\_)  
Petitioner, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on April 23, 2014. Petitioner was granted several opportunities to either pay the filing fee or file an In Forma Pauperis Application. When he failed to do so in the time provided, the Court dismissed the case without prejudice for failure to pay the filing fee on September 24, 2014. (Docket No. 8.) Petitioner filed a notice of appeal. (Docket No. 10.) The Ninth Circuit has remanded the case to this Court for the limited purpose of granting or denying a certificate of appealability (COA). (Docket No. 13.)

“Determining whether a COA should issue where the petition was dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one directed at the district court's procedural holding.” Slack v. McDaniel,

1 529 U.S. 473, 484-85 (2000). “When the district court denies a habeas petition on  
2 procedural grounds without reaching the prisoner's underlying constitutional claim, a  
3 COA should issue when the prisoner shows, at least, that jurists of reason would find it  
4 debatable whether the petition states a valid claim of the denial of a constitutional right  
5 and that jurists of reason would find it debatable whether the district court was correct  
6 in its procedural ruling.” Id. at 484. As each of these components is a “threshold  
7 inquiry,” the federal court “may find that it can dispose of the application in a fair and  
8 prompt manner if it proceeds first to resolve the issue whose answer is more apparent  
9 from the record and arguments.” Id. at 485.

10 For the reasons discussed above, Petitioner has not shown that jurists of reason  
11 would find it debatable whether the Court was correct in its procedural ruling that  
12 Petitioner had failed to pay the filing fee. Accordingly, the COA is DENIED.

13 The Clerk of the Court shall transmit a copy of this Order to the Ninth Circuit.

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15 DATED: 2/6/2015

  
16 EDWARD J. DAVILA  
17 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL L. OVERTON,  
Petitioner,

Case Number: CV14-01859 EJD

**CERTIFICATE OF SERVICE**

v.

WARDEN, et al.,

Respondents.  
\_\_\_\_\_ /

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 2/9/2015, 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.

Michael L. Overton C-47370  
California Men's Colony  
P. O. Box 8101  
San Luis Obispo, CA 93409-8101

Dated: 2/9/2015

Richard W. Wieking, Clerk  
/s/By: Elizabeth Garcia, Deputy Clerk