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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DENAIL SHANE GREEN,

Petitioner,

vs.

CHARLES M. HARRISON, Warden,

Respondent.

CASE NO. 05CV1485-MMA (CAB)

**ORDER DENYING PETITIONER'S
MOTION FOR CERTIFICATE OF
APPEALABILITY**

[Doc. No. 108]

On July 25, 2004, Petitioner Denail Shane Green, a state prisoner proceeding with counsel, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 challenging his San Diego County Superior Court conviction in case number SCD137792 for possession of cocaine base, a violation of California Penal Code section 11350(a). (Doc. No. 1.) On May 6, 2009, Magistrate Judge Papas issued a Report and Recommendation (“R&R”) recommending that the Court deny the Petition for Writ of Habeas Corpus. (Doc. No. 104.) On July 6, 2009, the Court issued an Order adopting the R&R and denying the Petition for Writ of Habeas Corpus. (Doc. No. 106.) On November 26, 2008, Petitioner filed a motion for certificate of appealability. (Doc. No. 108.) That same day, Petitioner also filed notice of appeal of the Court’s order denying his petition (Doc. No. 45.)

Before a petitioner can appeal a district court’s order denying a petition for writ of habeas corpus, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). The requirement that a petitioner seek a certificate of appealability is a gate-keeping mechanism that

1 protects the Court of Appeals from having to devote resources to frivolous issues, while at the
2 same time affording petitioners an opportunity to persuade the court that, through full briefing and
3 argument, the potential merit of claims may appear. *Lambright v. Stewart*, 220 F.3d 1022, 1025
4 (9th Cir. 2000). However, a state prisoner seeking a writ of habeas corpus has no absolute
5 entitlement to appeal a district court's denial of his petition, and an appeal is only allowed in
6 certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-336 (2003).

7 This Court will issue a certificate of appealability when a petitioner makes a substantial
8 showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial
9 showing, the petitioner must establish that "reasonable jurists could debate whether (or, for that
10 matter, agree that) the petition should have been resolved in a different manner or that the issues
11 presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529
12 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

13 In the present case, the Court denied the petition in its entirety. This Court finds that a
14 certificate of appealability is not warranted in this instance because the dismissal of the instant
15 petition under the circumstances here is not an issue debatable among jurists of reason nor could
16 any other court resolve the issue in a different manner. *Lambright*, 220 F.3d at 1024-25.
17 Accordingly, the Court hereby **DECLINES** to issue a certificate of appealability.

18 **IT IS SO ORDERED.**

19 DATED: November 17, 2009

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21 Hon. Michael M. Anello
22 United States District Judge

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