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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT JEFFRY FEIGER,)	Civil No. 05cv1754-L(PCL)
)	
Petitioner,)	ORDER DENYING REQUEST FOR
)	A CERTIFICATE OF
v.)	APPEALABILITY [doc. #40]
)	
RODERICK Q. HICKMAN,)	
)	
Respondent.)	
_____)	

Petitioner Robert Jeffry Feiger, a state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. Respondent filed an answer and a supporting memorandum of points and authorities to which petitioner filed a traverse. The case was referred to United States Magistrate Judge Peter C. Lewis for a report and recommendation ("Report") pursuant to 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.3. The magistrate judge's Report recommended the petition be denied. Petitioner filed timely objections to the Report. After a *de novo* review, the Court adopted the Report in its entirety, overruled petitioner's objections, and denied the petition on April 16, 2008. Judgment was entered on that same date. On May 14, 2008, petitioner filed a notice of appeal, a motion for leave to proceed *in forma pauperis* on appeal, and a motion for a Certificate of Appealability.

Petitioner sought a certificate of appealability for all the claims he raised in his petition:
(1) insufficiency of the evidence on Counts 2 and 3; (2) denial of right to impartial jury;

1 (3) denial of due process re: admission of evidence of prior lewd acts; (4) denial of due process
2 re: instruction on prior lewd acts; (5) violation of ex post facto clause re: statute of limitations;
3 and (6) cruel and unusual punishment. The Court granted petitioner a COA with respect to
4 petitioner's Sixth Amendment right to an impartial jury claim only and denied his request for the
5 remaining claims.

6 The Ninth Circuit Court of Appeals affirmed the decision of this court on December 15,
7 2010 with respect to the certified Sixth Amendment claim.


8 On March 21, 2011, petitioner attempted to file a request for a certificate of appealability
9 "for the remaining issues that were before the US District Court" with the Ninth Circuit Court of
10 Appeals. On that same date, the Court of Appeals forwarded petitioner's request for a COA to
11 the District Court for processing.

12 At the time petitioner filed his Notice of Appeal, this Court reviewed petitioner's original
13 request for a COA as to all the claims raised in his petition and found a COA unwarranted as to
14 the remaining claims. Petitioner has not presented any new legal or factual basis for a COA to
15 issue as to those claims. Further, petitioner's appeal has been completed and he is not entitled to
16 a second appeal.

17 Accordingly, petitioner's request for a COA is **DENIED**.

18 **IT IS SO ORDERED.**

19 DATED: April 5, 2011

20 
21 M. James Lorenz
United States District Court Judge

22 COPY TO:

23 HON. PETER C. LEWIS
24 UNITED STATES MAGISTRATE JUDGE

25 ALL PARTIES/COUNSEL
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