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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

OTIS TELBERT BERTHEY, JR.,,

Petitioner,

VS.

GUILLERMINA HALL, WARDEN,

Respondent.

CASE NO. 07cv0964 DMS (PCL)

ORDER DENYING REQUEST FOR CERTIFICATE OF APPEALABILITY

On November 13, 2008, this Court entered judgment denying the petition for a writ of habeas corpus brought by Petitioner pursuant to 28 U.S.C. § 2254. On February 2, 2009, Petitioner filed a "Petition for Writ of Certiorari," which this Court construes as a request for certificate of appealability. A certificate of appealability is authorized "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). *See also Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Having reviewed the Petition, the R&R and the November 13, 2008 Order denying the Petition, the Court finds Petitioner has failed to demonstrate that reasonable jurists would find this

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Court's denial of his petition debatable. Therefore, the Court denies Petitioner's request for a certificate of appealability.

IT IS SO ORDERED.

DATED: February 5, 2009

HON. DANA M. SABRAW United States District Judge

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