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

NATHAN KEVIN TURNER,

Plaintiff,

vs.

JAMES TILTON,

Defendant.

CASE NO. 07-CV-2036 JLS (AJB)

**ORDER: DENYING  
CERTIFICATE OF  
APPEALABILITY**

Nathan Kevin Turner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 23, 2008, pursuant to 28 U.S.C. § 636(b)(1), Magistrate Judge Anthony J. Battaglia issued a Report and Recommendation (“R&R”) that the Court deny the petition. (Doc. No. 18.) The Court received Petitioner’s objections to the R&R on October 15, 2008. (Doc. No. 25.) After considering the R&R and Petitioner’s objections, the Court adopted Magistrate Judge Battaglia’s recommendation over the objections and dismissed Petitioner’s petition. (Doc. No. 26.) On February 9, 2009, Petitioner filed a notice of appeal. (Doc. No. 28.)

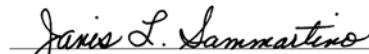
This Court must “construe [Petitioner’s] notice of appeal as a request for certificate of appealability.” Turner v. Calderon, 281 F.3d 851, 864–65 (9th Cir. 2002) (quoting Sassounian v. Roe, 230 F.3d 1097, 1100 (9th Cir. 2000)). A certificate of appealability is authorized “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2) (2008). “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

1 are adequate to deserve encouragement to proceed further.” Miller-El v. Cockrell, 537 U.S. 322, 327  
2 (2003); see also Slack v. McDaniel, 529 U.S. 473, 484 (2000). The Court must either (1) grant the  
3 certificate of appealability indicating which issues satisfy the required showing or (2) state why a  
4 certificate should not issue. Fed. R. App. P. 22(b).

5 In this case, the certificate should not issue because reasonable jurists would agree that this  
6 petition constitutes a successive appeal under 28 U.S.C. § 2244(b)(3), that Petitioner has not received  
7 authorization from the Ninth Circuit to file this petition, and that Petitioner is therefore statutorily  
8 barred from bringing this petition. Accordingly, the Court **DENIES** Petitioner's requests for a  
9 certificate of appealability.

10 IT IS SO ORDERED.

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12 DATED: February 24, 2009

  
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Honorable Janis L. Sammartino  
United States District Judge

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