

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

ERIC WILTON BURTON,	
	Petitioner,
vs.	
DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,	
	Respondent.

CASE NO. 08CV0325-LAB (POR)
**ORDER RE: CERTIFICATE OF
APPEALABILITY**

The Court denied Burton's habeas petition on September 30, 2011. Since then, Burton has filed a notice of appeal and an application for a certificate of appealability.

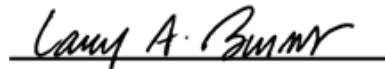
Burton is entitled to a certificate of appealability only if he "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional 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). Burton doesn't have to show that he should prevail on the merits. "He has already failed in that endeavor." *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). At the same time, the Court shouldn't issue a COA to Burton as a matter of course. He "must prove 'something more

1 than the absence of frivolity' or the existence of mere 'good faith' on his or her part." *Miller-*
2 *El*, 537 U.S. at 337–38 (citing *Barefoot*, 463 U.S. at 893).

3 Burton's habeas petition presented four claims, all of which the Court rejected. The
4 first two claims alleged that Burton's right under *Faretta v. California* to represent himself at
5 trial was violated. The Court **GRANTS** Burton a certificate of appealability as to those two
6 claims. While the Court found them to fail, the record allows for the possibility that a
7 reasonable jurist might reach a different conclusion. The Court **DENIES** Burton a certificate
8 of appealability, however, as to his claims under *Brady* and *Batson*. Those claims are
9 implausible.

10 **IT IS SO ORDERED.**

11 DATED: October 24, 2011



HONORABLE LARRY ALAN BURNS
United States District Judge

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28