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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY: Rm DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ROBERTO CARLOS RUIZ,  
  
vs.  
  
KEN CLARK, Warden,  
  
Petitioner,  
  
Respondent.

Civil No. 08CV1376-BEN (JMA)

**ORDER DENYING CERTIFICATE OF APPEALABILITY**

Petitioner Roberto Carlos Ruiz ("Petitioner"), a state inmate proceeding *pro se*, filed a federal petition for writ of habeas corpus ("Petition") challenging his state court conviction of forcible rape, attempted forcible oral copulation, two counts of forcible sodomy, two counts of first degree robbery, making a criminal threat, dissuading a witness by force or threat, two counts of oral copulation in concert, two counts of forcible oral copulation, and sodomy while acting in concert.

Respondent filed a Motion to Dismiss ("Motion"), requesting that the Petition be dismissed as untimely.

On August 12, 2009, Magistrate Judge Jan M. Adler issued a Report and Recommendation, recommending that the Motion be granted.

On September 8, 2009, Petitioner filed an Objection to Report and Recommendation.

On September 25, 2009, after making a *de novo* review, the Court adopted the Report and Recommendation in full, thereby dismissing the case with prejudice.

1           Petitioner now requests a Certificate of Appealability (“COA”) of the dismissal of his Petition.  
2           Petitioner’s request is **DENIED**.

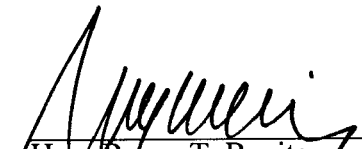
3           In a habeas corpus proceeding, there is no appeal as a matter of right. The Court may grant a  
4 COA “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28  
5 U.S.C. § 2253(c)(2). “The issue of whether to grant a COA ‘becomes somewhat more complicated  
6 where, as here, the district court dismisses the (claims) based on procedural grounds.’” *Lambright v.*  
7 *Stewart*, 220 F.3d 1022, 1026 (9<sup>th</sup> Cir. 2000), quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In  
8 that situation, the Court “must decide whether ‘jurists of reason would find it debatable whether the  
9 petition states a valid claim of the denial of a constitutional right’” and “whether ‘jurists of reason would  
10 find it debatable whether the district court was correct in its procedural ruling.’” (*Id.*) The Court may  
11 “simply take a ‘quick look’ at the face of the complaint to determine whether the petitioner has ‘facially  
12 allege[d] the denial of a constitutional right.’” (*Id.*)

13           Here, the Petition was dismissed as being untimely. This Court has reviewed the issues raised by  
14 Petitioner and concludes that neither the claims nor the district court’s procedural ruling are debatable  
15 among reasonable jurists. Accordingly, Petitioner’s request for COA is **DENIED**.

16           The Clerk of the Court is directed to enter judgment in this case, dismissing this action with  
17 prejudice

18           **IT IS SO ORDERED.**

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20           Dated: December 16, 2009

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22           \_\_\_\_\_  
23           Hon. Roger T. Benitez  
24           United States District Judge