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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY

DEPUTY



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

ISAAC C. MITCHELL,

Petitioner,

vs.

M. MARTEL, Warden, et al.,

Respondents.

CASE No. 09cv0518 BEN (LSP)
**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

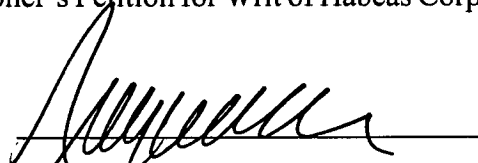
Concurrently herewith, the Court entered judgment denying the Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Effective December 1, 2009, this Court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Rule 11 foll. 28 U.S.C. § 2254; 28 U.S.C. § 2253; Fed.R.App.P. 22(b). For the reasons set forth below, the Court **DENIES** certificate of appealability.

A certificate of appealability ("COA") is authorized "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.A. § 2253(c)(2). "The issue of whether to grant a COA 'becomes somewhat more complicated where, as here, the district court dismisses the (claims) based on procedural grounds.'" *Lambricht v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000), quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In that situation, this Court "must decide whether 'jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right'" and "whether 'jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" *Id.*

1 In this case, the Court finds that reasonable jurists would not find it debatable that Petitioner
2 was denied a constitutional right or that the district court was not correct in its procedural ruling.
3 *Slack*, 529 U.S. at 484; *Lambright*, 220 F.3d at 1026. Accordingly, the Court hereby **DENIES** a
4 certificate of appealability as to the claims set forth in Petitioner's Petition for Writ of Habeas Corpus.

5 **IT IS SO ORDERED.**

6 DATED: 12/01, 2009

7 
8 **Hon. Roger T. Benitez**
9 United States District Judge

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