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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

HECTOR BERNAL,

Petitioner,

vs.

GARY SANDOR, WARDEN,

Respondent.

CASE NO. 09CV2194-BEN (NLS)

**ORDER DENYING CERTIFICATE  
OF APPEALABILITY**

Concurrently herewith, the Court entered judgment denying Petitioner's Petition for Writ of Habeas Corpus under 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 as to all claims asserted by Petitioner in his Petition for Writ of Habeas Corpus.

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. § 2253(c)(2). The applicant must meet the "substantial showing" standard with respect to each issue he or she seeks to raise on appeal. *Lambright v. Stewart*, 220 F.3d 1022, 1024 (9th Cir. 2000).


"The issue of whether to grant a COA 'becomes somewhat more complicated where, as

1 here, the district court dismisses the (claims) based on procedural grounds.” *Lambright v.*  
2 *Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000), quoting *Slack v. McDaniel*, 529 U.S. 473, 484  
3 (2000). In that situation, this Court “must decide whether ‘jurists of reason would find it debatable  
4 whether the petition states a valid claim of the denial of a constitutional right” and “whether  
5 ‘jurists of reason would find it debatable whether the district court was correct in its procedural  
6 ruling.” *Id.*

7 In this case, the Court finds that reasonable jurists would not find it debatable that  
8 Petitioner was denied a constitutional right or that the district court was not correct in its  
9 procedural ruling. *Slack*, 529 U.S. at 484; *Lambright*, 220 F.3d at 1026. Accordingly, the Court  
10 hereby **DENIES** certificate of appealability.

11 **IT IS SO ORDERED.**

12 Date: June 16, 2010

  
Hon. Roger T. Benitez  
United States District Court Judge