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

AUGUSTUS NELSON,

vs.

KEN CLARK, Warden,

Petitioner,

Respondent.

CASE NO. 10-CV-1047 - IEG (MDD)

**ORDER DENYING MOTION FOR
CERTIFICATE OF
APPEALABILITY**

[Doc. No. 36]

Presently before the Court is Petitioner’s motion for a certificate of appealability. [Doc. No. 36.] On August 23, 2011, the Court dismissed Petitioner’s petition for habeas corpus as barred by the statute of limitations and denied Petitioner a certificate of appealability. [Doc. No. 33.] Accordingly, the Court treats the present motion as a motion for reconsideration of the Court’s prior order denying Petitioner a certificate of appealability.


A petitioner complaining of detention arising from state court proceedings must obtain a certificate of appealability to file an appeal of the final order in a federal habeas proceeding. 28 U.S.C. § 2253(c)(1)(A). The district court may issue a certificate of appealability if the petitioner “has made a substantial showing of the denial of a constitutional right.” *Id.* § 2253(c)(2). To make a “substantial showing” when the district court denies a habeas petition on procedural grounds, the petitioner must show “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v.*

1 *McDaniel*, 529 U.S. 473, 484 (2000).

2 After reviewing the petition, this motion, the Court’s prior order, and other related papers,
3 the Court again concludes that Petitioner has not made a “substantial showing” of the denial of a
4 constitutional right. Reasonable jurists would not find it debatable whether the Court was correct
5 in its procedural ruling on the statute of limitations issue. Accordingly, the Court **DENIES**
6 Petitioner’s motion for a certificate of appealability with respect to all of Petitioner’s claims.

7 **IT IS SO ORDERED.**

8 **DATED:** October 7, 2011


9 **IRMA E. GONZALEZ, Chief Judge**
10 **United States District Court**

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