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

<p>GREGORY DOWNS,</p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>DOMINGO URIBE, JR., WARDEN, et al.,</p> <p style="text-align: right;">Respondent.</p>	
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CASE NO. 10-CV-2029 H (MDD)

**ORDER:**

**(1) DENYING CERTIFICATE  
OF APPEALABILITY**

[Doc. No. 59]

**(2) DENYING AS MOOT  
PETITIONER’S MOTION FOR  
DISCOVERY**

[Doc. No. 57]

On September 21, 2010, Gregory Downs (“Petitioner”), a state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus (“Petition”) pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) On October 25, 2010, Petitioner filed an amended petition. (Doc. No. 7.) On April 27, 2011, the Court granted Respondent’s motion to dismiss and dismissed Petitioner’s writ of habeas corpus as successive. (Doc. No. 55.) On May 10, 2011, Petitioner filed an appeal to the Ninth Circuit Court of Appeals. (Doc. No. 58.) On May 10, 2011, Petitioner also filed a request for a certificate of appealability. (Doc. No. 57.)

According to the Federal Rules of Appellate Procedure, a petitioner may not seek an appeal of a claim arising out of state court detention unless the petitioner obtains a certificate of appealability from either the district judge or a circuit judge under 28 U.S.C. § 2253. See

1 Fed. R. App. P. 22(b). Section 2253 states that a certificate of appealability may only issue if  
2 the petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C.  
3 § 2253(c)(1). If the petition is dismissed on procedural grounds without reaching the  
4 petitioner’s underlying constitutional claim, the court must decide whether “jurists of reason  
5 would find it debatable whether the petition states a valid claim of the denial of a constitutional  
6 right” and whether “jurists of reason would find it debatable whether the district court was  
7 correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 478 (2000); Lambright v.  
8 Stewart, 220 F.3d 1022, 1026 (9th Cir. 2000).

9 Because each component is a part of the threshold inquiry, the court may dispose of the  
10 case “in a prompt manner if it proceeds first to resolve the issue whose answer is more  
11 apparent from the record and arguments.” Slack, 529 U.S. at 485. Therefore, a court does not  
12 have to address the constitutional question “if there is also present some other ground upon  
13 which the case may be disposed of.” Id. (quoting Ashwander v. TVA, 297 U.S. 288, 347  
14 (1936) (Brandeis, J., concurring)).

15 In 2009, Petitioner filed two petitions for writ of habeas corpus with the United States  
16 District Court for the Eastern District of California. See Downs v. Cal. Bd. of Prison Terms,  
17 No. 09-cv-00715-GSA (HC) (E.D. Cal., filed Mar. 25, 2009); Downs v. Cal. Attorney General,  
18 No. 09-cv-01104-FCD-GGH (E.D. Cal., filed April 22, 2009). In the first petition, Petitioner  
19 raised claims relating to his February 1, 2005 and November 30, 2006 parole board hearings  
20 and the Board’s alleged failure to turn over exculpatory evidence for Petitioner’s parole  
21 hearings among other claims. See Downs v. Cal. Bd. of Prison Terms, 2009 WL 1312901, at  
22 \*2 (E.D. Cal. May 12, 2009). On May 12, 2009, the district court dismissed the first petition  
23 on the merits for failure to state a claim. See id. On May 26, 2009, the district court dismissed  
24 the second petition for being duplicative and frivolous. See Downs v. Cal. Attorney General,  
25 No. 09-cv-01104-FCD-GGH (E.D. Cal., Order filed Mar. 26, 2009 [Doc. No. 6]). In the  
26 present petition, Petitioner again challenged the February 1, 2005 and November 30, 2006  
27 parole board hearings, and the Board’s alleged failure to turn over exculpatory evidence for  
28 Petitioner’s parole hearings. (Doc. No. 7 at 23-25, 33-37, 42-43.)

1 The Court dismissed Petitioner's action because Petitioner challenged the same parole  
2 hearing issues he challenged in his prior habeas corpus petitions without obtaining an order  
3 from the Ninth Circuit authorizing this Court to consider the successive petition. See 28  
4 U.S.C. § 2244(b)(3)(A); see also 28 U.S.C. § 2254(b)(1) ("A claim presented in a second or  
5 successive habeas corpus application under section 2254 that was presented in a prior  
6 application shall be dismissed."). In addition, the Court dismissed Petitioner's other claims  
7 because those claims could have been raised in that previous petitions. See McNabb v. Yates,  
8 576 F.3d 1028, 1029 (9th Cir. 2009) ("A habeas petition is second or successive . . . if it raises  
9 claims that were or could have been adjudicated on the merits."). Because a successive  
10 petition is "a plain procedural bar . . . and the district court is correct to invoke it to dispose of  
11 the case" jurists of reason would not find it debatable whether the Court was correct in its  
12 procedural ruling. See Slack, 529 U.S. at 484. Therefore, the Court DENIES Petitioner's  
13 request for a certificate of appealability.

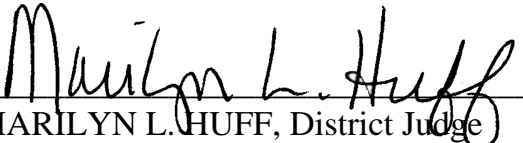
14 On April 8, 2011, Petitioner filed a motion to take depositions pursuant to Federal Rule  
15 of Civil Procedure 27. (Doc. No. 57.) Because the Court dismissed Petitioner's writ of habeas  
16 corpus and denies a certificate of appealability, the Court DENIES as moot Petitioner's motion  
17 to take depositions.

### 18 Conclusion

19 The Court DENIES Petitioner's request for a certificate of appealability and DENIES  
20 as moot Petitioner's motion for discovery.

21 **IT IS SO ORDERED.**

22 DATED: May 12, 2011

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25 MARILYN L. HUFF, District Judge  
26 UNITED STATES DISTRICT COURT

26 COPIES TO:  
27 All parties of record.  
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