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

TOMMY MCGUIRE,	Case No. 17-cv-2260-BAS-BLM
v.	ORDER DENYING CERTIFICATE OF APPEALABILITY
JULIE JONES,	[ECF No. 13]
Petitioner,	
Respondent.	

On November 9, 2017, this Court dismissed Petitioner Tommy McGuire’s Petition for a Writ of Habeas Corpus with prejudice for lack of jurisdiction. (ECF No. 3.) The Court also denied Petitioner’s motion to reconsider that dismissal. (ECF No. 7.) Although the Court did not grant or deny a certificate of appealability, Petitioner subsequently appealed both denials to the Ninth Circuit. (ECF No. 8.) The Ninth Circuit has remanded the case to this Court for limited issue of whether to grant or deny a certificate of appealability to Petitioner. (ECF No. 13.) The Court denies Petitioner a certificate.

Pursuant to Rule 11 of the Rules following 28 U.S.C. §2254, a district court “must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” A habeas petitioner may not appeal the denial of a habeas petition concerning detention arising from state court proceedings unless he obtains a

1 certificate of appealability from a district or circuit court judge. 28 U.S.C.
2 §2253(c)(1)(A); *see also United States v. Asrar*, 116 F.3d 1268, 1269–70 (9th Cir.
3 1997). The district court may issue a certificate of appealability if the petitioner “has
4 made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
5 §2253(c)(2). To meet this threshold showing, a petitioner must show that: (1) the
6 issues are debatable among jurists of reason, (2) that a court could resolve the issues
7 in a different manner, or (3) that the questions are adequate to deserve encouragement
8 to proceed further. *Maciel v. Cate*, 731 F.3d 928, 932 (9th Cir. 2013). Based on a
9 review of the record Petitioner submitted to this Court (ECF No. 1) and the express
10 jurisdictional limitations of 28 U.S.C. §2241(a) (“Writs of habeas corpus may be
11 granted by the Supreme Court, any justice thereof, the district courts and any circuit
12 judge *within their respective jurisdictions*”) (emphasis added), the Court finds that
13 jurists of reason could not find debatable whether this Court was correct in dismissing
14 the Petition for lack of jurisdiction and denying reconsideration of dismissal.

15 Based on the foregoing, it is **HEREBY ORDERED** that Petitioner is
16 **DENIED** a certificate of appealability as to dismissal of the Petition with prejudice
17 (ECF No. 3) and denial of reconsideration of dismissal (ECF No. 7).

18 **IT IS SO ORDERED.**

19
20 **DATED: January 11, 2018**


Hon. Cynthia Bashant
United States District Judge