UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ERICA D. HAYWOOD,

Petitioner,

v.

SAN DIEGO SHERIFF, et al.,

Respondents.

Case No. 19cv1784 - MMA (RBB)

ORDER DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY

Erica D. Haywood ("Petitioner"), a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. *See* Doc. No. 1. On September 24, 2019, the Court dismissed the petition without prejudice as barred under the abstention doctrine. The Court further determined that Petitioner's claims should be brought in an action pursuant to 42 U.S.C. § 1983—not in a § 2254 petition. Doc. No. 3 at 1, 3.

Rule 11 of the Federal Rules Governing Section 2254 Cases states that "the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." A certificate of appealability ("COA") is not issued unless there is "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a petition is, as here, dismissed on procedural grounds, a COA should be granted only if two elements are satisfied: (1) "jurists of reason would find it debatable whether

the petition states a valid claim of the denial of a constitutional right"; and (2) "jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000). As each of these components is a "threshold inquiry," the federal court "may find that it can dispose of the application in a fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent from the record and arguments." *Id*. at 485. Petitioner has not shown that jurists of reason would find anything debatable in the procedural ruling that the petition is barred by the abstention doctrine and should be brought instead as a § 1983 action.[1] Thus, the Court need not decide whether the application states a valid constitutional claim. *See id*. at 485.

Accordingly, the Court **DECLINES** to issue a certificate of appealability in this case.

IT IS SO ORDERED.

Dated: October 10, 2019

HON. MICHAEL M. ANELLO
United States District Judge

[1] In fact, Petitioner filed a § 1983 action in this District on October 9, 2019. *See* Complaint, *Haywood v. U.C. San Diego et al.* (S.D. Cal. 2019) (No. 3:19-cv-1955 MMA (BGS)).