UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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JOSE L. ECHAVARRIA , Petitioner, v. TIMOTHY FILSON, *et al.*, Respondents.	Case No. 3:98-cv-00202-MMD-VPC ORDER

In this capital habeas corpus action, on January 16, 2015, this Court entered judgment in favor of the petitioner, Jose L. Echavarria (ECF No. 211), and the case is currently on appeal in the Ninth Circuit Court of Appeals. On January 10, 2017, Echavarria filed in this Court a motion for leave to supplement his petition (ECF No. 221), seeking to add to his habeas petition a claim based on *Hurst v. Florida*, 136 S.Ct. 616 (2016). This Court denied that motion on February 22, 2017 (ECF No. 231). Echavarria appealed from that ruling (ECF No. 232).

On March 29, 2017, the Ninth Circuit Court of Appeals remanded the case for the limited purpose of this Court granting or denying Echavarria a certificate of appealability regarding its February 22, 2017, ruling. (*See* Order filed March 29, 2017 (ECF No. 234).)

The standard for the issuance of a certificate of appealability requires a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c). The Supreme Court has interpreted 28 U.S.C. § 2253(c) as follows:

> Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. The issue becomes somewhat more complicated where, as here, the district court dismisses the petition based on procedural grounds. We hold as follows: When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, 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. McDaniel, 529 U.S. 473, 484 (2000); *see also James v. Giles*, 221 F.3d 1074, 1077-79 (9th Cir. 2000).

Applying the standard articulated in *Slack*, the Court finds that a certificate of appealability is unwarranted with respect to the ruling of this Court on February 22, 2017. Reasonable jurists would not find the Court's ruling debatable.

It is therefore ordered that, with regard to the order of February 22, 2017 (ECF No. 231), the petitioner is denied a certificate of appealability.

DATED THIS 3rd day of April 2017.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE