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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MICHAEL BRUCE BYNOE,

v.

HELLING, et al.,

Respondents.

Case No. 3:07-cv-00009-LRH-VPC
ORDER

On September 23, 2009, this court dismissed this habeas petition without prejudice for failure to exhaust the claims (ECF No. 41), and judgment was entered (ECF No. 42). On September 6, 2017, this court denied petitioner’s Rule 60(b) motion for relief from final judgment (ECF No. 65). This was a final order adverse to the petitioner. As such, Rule 11 of the Rules Governing Section 2254 Cases requires this court to issue or deny a certificate of appealability (COA).

Pursuant to 28 U.S.C. § 2253(c)(2), a COA may issue only when the petitioner "has made a substantial showing of the denial of a constitutional right." With respect to claims rejected on the merits, a petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). For procedural rulings, a COA will issue only if reasonable jurists could debate (1) whether the petition states a valid claim of the denial of a constitutional right and (2) whether the court's procedural ruling was correct. *Id.*

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Having reviewed its denial of Bynoe's Rule 60(b) motion, the court finds that reasonable jurists would not find this conclusion to be debatable or wrong. The court therefore declines to issue a certificate of appealability in this case.

IT IS THEREFORE ORDERED that petitioner's motion for a certificate of appealability (ECF No. 67) is **DENIED**. A certificate of appealability is denied.

DATED this 13th day of October, 2017.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE