1		
2		
3		
4		
5		
6	UNITED STATES DISTRICT COURT	
7	DISTRICT OF NEVADA	
8		
9	GREG MLACNIK,	
10	Petitioner,	3:08-cv-00164-LRH-VPC
11	vs.	ORDER
12	BILL DONAT, <i>et al.</i> ,	
13	Respondents.	
14		
15	Petitioner filed a first amended petition for writ of habeas corpus (docket #19) on August 5,	
16	2009 and respondents have moved to dismiss the petition (docket #22). The court issued it order	
17	regarding the importance of responding to a motion to dismiss and outlined the time-line for such a	
18	response (docket #26). Petitioner has since failed to respond to the motion or to seek additional time	
19	to do so.	
20	Under Local Rule 7-2(d), failure to file points and authorities in response to any motion shall	
21	constitute a consent to the granting of the motion.	
22	Certificate of Appealability	
23	In order to proceed with an appeal from this court, petitioner must receive a certificate of	
24	appealability. 28 U.S.C. § 2253(c)(1). Generally, a petitioner must make "a substantial showing of	
25	the denial of a constitutional right" to warrant a certificate of appealability. <i>Id.</i> The Supreme Court	
26	has held that a petitioner "must demonstrate that reasonable jurists would find the district court's	
27	assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484	
28	(2000).	

1	Where a court has dismissed a petitioner's habeas corpus petition on procedural grounds,	
2	however, the determination of whether a certificate of appealability issues becomes a two-part test.	
3	The Supreme Court has stated that under such circumstances:	
4	A COA should issue when the prisoner showsthat jurists of reason would find it debatable whether the petition states a valid claim of the	
5	denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.	
6		
7	Id. See also Miller-El v. Cockrell, 537 U.S. 322, 337-38 (2003). Therefore, in order to obtain a	
8	COA in cases dismissed on procedural grounds, petitioner has the burden of demonstrating both that	
9	he was denied a valid constitutional right <i>and</i> that jurists of reason would find it debatable whether	
10	the court's procedural ruling was correct. In this case petitioner as much as consented to dismissal of	
11	his petition by failing to oppose the respondents' motion, despite having been specifically warned of	
12	the consequences of such an action. As a result, "a reasonable jurist could not conclude either that	
13	the district court erred in dismissing the petition or that the petitioner should be allowed to proceed	
14	further." Slack, 529 U.S. at 484.	
15	IT IS THEREFORE ORDERED that respondents' first motion to dismiss (docket #22) is	
16	GRANTED. The Clerk shall ENTER JUDGMENT ACCORDINGLY.	
17	DATED this 8 th day of February, 2010.	
18	Ellipha	
19	Oanne	
20		
21	LARRY R. HICKS UNITED STATES DISTRICT JUDGE	
22		
23		
24		
25		
23 26		
20 27		
28	2	