

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BRET HENRY KELLER,

Petitioner,

Case No. 3:15-cv-00563-MMD-VPC

v.

ORDER

ISIDRO BACA, *et al.*,

Respondents.

On June 12, 2018, the Court denied Petitioner's motion for stay and abeyance and directed Petitioner to either (1) move to dismiss his unexhausted claims or (2) move to dismiss the entire Petition. On July 6, 2018, Petitioner filed a notice of appeal. That same date, the Court of Appeals issued a notice indicating that the appeal would not proceed unless and until either this Court or the Court of Appeals determined that a certificate of appealability should issue.


At the outset, the Court notes that this action has not been dismissed, final judgment has not been entered, and the Court has not certified any order for interlocutory appeal. If the Court of Appeals finds that it has jurisdiction to consider Petitioner's appeal, however, the Court will deny Petitioner a certificate of appealability.

In order to proceed with an appeal, Petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9th Cir. 2006); *see also United States v. Mikels*, 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must make "a substantial showing of the denial of a constitutional right" to warrant a certificate of appealability.

1 *Allen*, 435 F.3d at 951, 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84
2 (2000). “The petitioner must demonstrate that reasonable jurists would find the district
3 court’s assessment of the constitutional claims debatable or wrong.” *Allen*, 435 F.3d at
4 951 (quoting *Slack*, 529 U.S. at 484). In order to meet this threshold inquiry, the petitioner
5 has the burden of demonstrating that the issues are debatable among jurists of reason;
6 that a court could resolve the issues differently; or that the questions are adequate to
7 deserve encouragement to proceed further. *Id.* When the defendant’s claim is denied on
8 procedural grounds, a certificate of appealability should issue if the petitioner shows: (1)
9 “that jurists of reasons would find it debatable whether the petition states a valid claim of
10 the denial of a constitutional right;” and (2) “that jurists of reason would find it debatable
11 whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484-85.

12 The Court has considered the issues raised by Petitioner, with respect to whether
13 they satisfy the standard for issuance of a certificate of appealability, and determines that
14 none meet that standard. The Court therefore denies Petitioner a certificate of
15 appealability.

16 DATED THIS 10th day of July 2018.

17
18 
19 _____
20 MIRANDA M. DU
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28