

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JESSE JOHNSON, JR., : **CIVIL ACTION NO. 1:09-CV-2045**

Petitioner : **(Judge Conner)**

v. :

**PENNSYLVANIA BOARD OF
PROBATION & PAROLE, et al.,** :

Respondents :

ORDER

AND NOW, this 6th day of January, 2010, upon consideration of petitioner's application (Doc. 11) for certificate of appealability, wherein petitioner requests authorization to appeal the court's November 12, 2009 dismissal of his second successive habeas petition, (see Doc. 5), and recognizing that a habeas petitioner attempting to appeal must first obtain a certificate of appealability, see 28 U.S.C. § 2253(c)(1)(A), and that when a district court dismisses a petition on procedural grounds, the petitioner is entitled to a certificate only if he or she demonstrates that (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 the procedural ruling, Slack v. McDaniel, 529 U.S. 473, 484 (2000), and it appearing that petitioner does not substantively address the court's ruling that his habeas challenge could have been raised in his initial § 2254 petition, (see Doc. 5 n.1 (explaining that petitioner was in possession of "all the facts necessary to raise his parole claim before he filed his first

habeas petition”)), and concluding that jurists of reason could not determine that the court erred in adjudging that the petition filed on October 22, 2009 was procedurally barred, it is hereby ORDERED that the application (Doc. 11) for certificate of appealability is DENIED. See 28 U.S.C. § 2253(c); see also Slack, 529 U.S. at 484 (“Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.”).

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge