

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>TAE H. CHON, Petitioner,</p> <p>vs.</p> <p>UNITED STATES OF AMERICA, Respondent.</p>	<p>MEMORANDUM DECISION AND ORDER DENYING PETITIONER'S MOTION FOR DEFAULT JUDGMENT AND DENYING PETITIONER'S MOTION FOR CERTIFICATE OF APPEALABILITY</p> <p>Civil Case No. 2:09-CV-654 TS Criminal Case No. 2:01-CR-487 TS</p>
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This matter is before the Court on Petitioner's Motion for Default Judgment and Motion for Certificate of Appealability ("COA"). For the reasons discussed below, the Court will deny both Motions.

I. BACKGROUND

The complete background of Petitioner's criminal case and his motion under 28 U.S.C. § 2255 have been addressed in prior orders and need not be repeated here. The instant Motions arise out of the Court's recent denial of Petitioner's motions, filed pursuant to Fed. R. Civ. P. 59, 60(d), and 52(b). Petitioner has since appealed the Court's decision on those motions.

II. DISCUSSION

A. MOTION FOR DEFAULT JUDGMENT

Petitioner's Motion for Default Judgment was filed both in this Court and before the Tenth Circuit Court of Appeals. The Tenth Circuit Court of Appeals denied his Motion, to the extent it sought relief from that court.

In his Motion for Default Judgment, Petitioner complains that Respondent did not respond to Petitioner's rule 59, 60(d), and 52(b) motions. It is true that Respondent did not respond to these motions. However, the Court was able to rule on the motions without a response from Respondent. Therefore, the Court will deny Petitioner's Motion for Default Judgment.

B. MOTION FOR CERTIFICATE OF APPEALABILITY

28 U.S.C. § 2253(c)(1)(B) provides: "Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from . . . the final order in a proceeding under section 2255." Under 2253(c)(2), a certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right."¹

To make this showing, Petitioner must demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further."²

¹28 U.S.C. § 2253(c)(2).

²*Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quotations omitted).

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.³

Considering this standard, the Court finds that Petitioner is not entitled to a certificate of appealability. Therefore, his Motion will be denied.

III. CONCLUSION


It is therefore

ORDERED that Petitioner's Motion for Default Judgment (Docket No. 152 in Case No. 2:01-CR-487 and Docket No. 37 in Case No. 2:09-CV-654) is DENIED. It is further

ORDERED that Petitioner's Motion for Certificate of Appealability (Docket No. 153 in Case No. 2:01-CR-487 and Docket No. 38 in Case No. 2:09-CV-654) is DENIED.

DATED December 17, 2012.

BY THE COURT:



TED STEWART
United States District Judge

³*Slack v. McDaniel*, 529 U.S. 473, 484 (2000).