1 2 3 4 UNITED STATES DISTRICT COURT 5 WESTERN DISTRICT OF WASHINGTON AT SEATTLE 6 7 8 RICKEY CALHOUN, Case No. C08-0974RSL 9 Petitioner, v. 10 ORDER DENYING DR. HENRY RICHARDS, CERTIFICATE OF APPEALABILITY 11 Respondent. 12 13 This matter comes before the Court on petitioner's "Notice of Appeal" which the 14 Court considers a request for a certificate of appealability under 28 U.S.C. § 2253. Because 15 petitioner filed his notice of appeal after April 24, 1996, his appeal is governed by the 16 Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which worked substantial 17 changes to the law of habeas corpus. Under the amended version of 28 U.S.C. § 2253(c), a 18 petitioner may not appeal the denial of a habeas corpus petition unless the district court or the 19 Ninth Circuit issues a certificate of appealability identifying the particular issues that may be 20 pursued on appeal. <u>United States v. Asrar</u>, 116 F.3d 1268 (9th Cir. 1997). 21 To obtain a certificate of appealability, the petitioner must make a substantial 22 showing of the denial of a constitutional right. "Obviously the petitioner need not show that he 23 should prevail on the merits. He has already failed in that endeavor." <u>Barefoot v. Estelle</u>, 463 24 U.S. 880, 893 n.4 (1983). Rather, he must demonstrate that the resolution of the habeas petition 25 is debatable among reasonable jurists or that the issues presented were "adequate to deserve 26 ORDER DENYING CERTIFICATE OF APPEALABILITY

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1	encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Where a
2	petition is dismissed on procedural grounds, the Court must determine whether "jurists of
3	reason" would debate (1) whether the petition states a valid claim of the denial of a
4	constitutional right and (2) whether the district court's procedural ruling was correct. Slack, 529
5	U.S. at 484.
6	Having reviewed the record in this case, including the Report and
7	Recommendation of the Honorable James P. Donohue, United States Magistrate Judge, the
8	Court finds that the dismissal of petitioner's two grounds for relief is not debatable among
9	reasonable jurists. Petitioner's claims should not, therefore, be the subject of an appeal.
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11	For all of the foregoing reasons, petitioner's request for a certificate of
12	appealability is DENIED.
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14	Dated this 12th day of January, 2009.
15	MNS Casnik
16	Robert S. Lasnik
17	United States District Judge
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