

APPENDIX B

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSEPH HYUNGSEOP SHIM,) **NO. CV 17-7743-MWF (KS)**
Petitioner,)
v.)
MICHAEL SEXTON, Warden,) **ORDER DENYING CERTIFICATE OF**
Respondent.) **APPEALABILITY**
_____))

By separate Order and Judgment filed concurrently, the Court has determined that habeas relief should be denied and this 28 U.S.C. § 2254 action should be dismissed with prejudice. Under 28 U.S.C. § 2253(c)(1)(A), an appeal may not be taken from a “final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court” unless the appellant first obtains a certificate of appealability (“COA”). The Court addresses the COA question pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts.

“A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In *Slack v.*

1 *McDaniel*, 529 U.S. 473 (2000), the Supreme Court clarified the showing required to satisfy
2 Section 2253(c)(2) when, as here, a habeas petition has been denied on the merits:
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4 To obtain a COA under § 2253(c), a habeas prisoner must make a substantial
5 showing of the denial of a constitutional right, a demonstration that, under
6 *Barefoot [v. Estelle*, 463 U.S. 880 (1983)], includes showing that reasonable
7 jurists could debate whether (or, for that matter, agree that) the petition should
8 have been resolved in a different manner or that the issues presented were
9 “adequate to deserve encouragement to proceed further.”” (citation omitted)
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11 Where a district court has rejected the constitutional claims on the merits, the
12 showing required to satisfy § 2253(c) is straightforward: The petitioner must
13 demonstrate that reasonable jurists would find the district court’s assessment of
14 the constitutional claims debatable or wrong.
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16 529 U.S. at 483-84. *See also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (a petitioner
17 satisfies Section 2253(c)(2) “by demonstrating that jurists of reason could disagree with the
18 district court’s resolution of his constitutional claims or that jurists could conclude the issues
19 presented are adequate to deserve encouragement to proceed further”).
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21 In her Report and Recommendation, the Magistrate Judge concluded that federal habeas
22 relief was not warranted based on the claims alleged in the Petition. After carefully
23 considering the record, the Court has accepted the Magistrate Judge’s findings and
24 conclusions in a concurrently-filed Order. The Court has further concluded that: reasonable
25 jurists would not find its resolution of the Petition to be “debatable or wrong”; and the issues
26 raised by Petitioner are not “adequate to deserve encouragement to proceed further.” *Slack*,
27 529 U.S. at 484.
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1 Accordingly, issuance of a certificate of appealability is not warranted.
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4 IT IS SO ORDERED.
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6 DATED: August 20, 2018
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MICHAEL W. FITZGERALD
UNITED STATES DISTRICT JUDGE