UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SOBHY FAHMY AMIN ISKANDER, Petitioner-Appellant, v. DEAN BORDERS, Warden, Respondent-Appellee.	No. 18-56639 D.C. No. 5:18-cv-02288-SJO-MRW Central District of California, Riverside ORDER

Before: CANBY and WARDLAW, Circuit Judges.

The request for a certificate of appealability (Docket Entry Nos. 2, 3) is denied because appellant has not shown 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." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOBHY ISKANDER, Petitioner, v. DEAN BORDERS, Warden, Respondent.	Case No. ED CV 18-2288 SJO (MRW) ORDER DENYING CERTIFICATE OF APPEALABILITY

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts requires a district court to issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Under 28 U.S.C. § 2253(c)(2), a COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right."

Here, the Court determined that the petition was successive under 28 U.S.C. § 2244. "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim," the Court's

determination of whether a COA should issue is governed by Slack v. McDaniel, 529 U.S. 473 (2000). Two showings are required to justify the issuance of a COA. Petitioner must show that jurists of reason would find it debatable whether: (a) "the petition states a valid claim of the denial of a constitutional right," and (b) "the district court was correct in its procedural ruling." Id. at 484. The Supreme Court further explained:

> Section 2253 mandates that both showings be made before the court of appeals may entertain the appeal. Each component of the § 2253(c) showing is part of a threshold inquiry, and a court may find that it can dispose of the application in a fair and prompt manner if it proceeds to first resolve the issue whose answer is more apparent from the record and arguments.

Id. at 485. The COA inquiry is made "without full consideration of the factual or legal bases adduced in support of the claims." Buck v. Davis, ___ U.S ___, 137 S. Ct. 759, 773-74 (2017) (quotation marks omitted).

Here, the Court concludes that petitioner failed to make the requisite showing that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling."

Accordingly, a Certificate of Appealability is denied in this case.

DATE: November 27, 2018

S. James Otero

HON. S. JAMES OTERO
UNITED STATES DISTRICT JUDGE