

APPENDIX "A"

UNITED STATES COURT OF APPEALS ORDER

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 16 2025

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

MELVIN CLARK,

Plaintiff - Appellant,

v.

GENA JONES, Warden,

Defendant - Appellee.

No. 25-301

D.C. No. 2:22-cv-07253-VBF-SP
Central District of California,
Los Angeles

ORDER

Before: H.A. THOMAS and DESAI, Circuit Judges.

Appellant's request for a certificate of appealability (Docket Entry Nos. 4 & 6) 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.

APPENDIX "B"

UNITED STATES DISTRICT COURT ORDER

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 MELVIN CLARK,) Case No. 2:22-cv-07253-VBF-SP
12)
13) Petitioner,) ORDER DENYING A CERTIFICATE
14) v.) OF APPEALABILITY
15) GENA JONES, Warden,)
16) Respondent.)
17)

18 Rule 11 of the Rules Governing Section 2254 Cases in the United States District
19 Courts reads as follows:

20 (a) **Certificate of Appealability.** The district court must issue or
21 deny a certificate of appealability when it enters a final order adverse to the
22 applicant. Before entering the final order, the court may direct the parties to
23 submit arguments on whether a certificate should issue. If the court issues a
24 certificate, the court must state the specific issue or issues that satisfy the
25 showing required by 28 U.S.C. § 2253(c)(2). If the court denies a
26 certificate, the parties may not appeal the denial but may seek a certificate
27 from the court of appeals under Federal Rule of Appellate Procedure 22. A
28 motion to reconsider a denial does not extend the time to appeal.

1 **(b) Time to Appeal.** Federal Rule of Appellate Procedure 4(a)
2 governs the time to appeal an order entered under these rules. A timely
3 notice of appeal must be filed even if the district court issues a certificate of
4 appealability.

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6 Under 28 U.S.C. § 2253(c)(2), a Certificate of Appealability may issue “only if the
7 applicant has made a substantial showing of the denial of a constitutional right.” The
8 Supreme Court has held that this standard means a showing that “reasonable jurists could
9 debate whether (or, for that matter, agree that) the petition should have been resolved in a
10 different manner or that the issues presented were adequate to deserve encouragement to
11 proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 483-84, 120 S. Ct. 1595, 146 L. Ed.
12 2d 542 (2000) (internal quotation marks omitted, citation omitted).

13 Two showings are required “[w]hen the district court denies a habeas petition on
14 procedural grounds without reaching the prisoner’s underlying constitutional claim.”
15 *Slack*, 529 U.S. at 484. In addition to showing that “jurists of reason would find it
16 debatable whether the petition states a valid claim of the denial of a constitutional right,”
17 the petitioner must also make a showing that “jurists of reason would find it debatable
18 whether the district court was correct in its procedural ruling.” *Id.* As the Supreme Court
19 further explained:

20 Section 2253 mandates that both showings be made before the court of
21 appeals may entertain the appeal. Each component of the § 2253(c) showing
22 is part of a threshold inquiry, and a court may find that it can dispose of the
23 application in a fair and prompt manner if it proceeds first to resolve the
24 issue whose answer is more apparent from the record and arguments.
25 *Id.* at 485.

26 Here, the Court has denied the Petition on the ground that the Petition is
27 impermissibly second and successive. After duly considering petitioner’s contentions in
28 support of his arguments, including in his objections to the Report and Recommendation,

1 the Court finds that petitioner has failed to make the requisite showing that “jurists of
2 reason would find it debatable whether the district court was correct in its procedural
3 ruling” that his Petition is impermissibly second and successive.

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

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6 Dated: December 10, 2024

7 /s/ Valerie Baker Fairbank

8 HONORABLE VALERIE BAKER FAIRBANK
9 UNITED STATES DISTRICT JUDGE
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