

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

ALFRED EUGENE MACHADO,

Petitioner,

vs.

THOMAS L. CAREY, Warden, *ET AL*,

Respondents.

No. 2:06-cv-00829-JKS-CMK

ORDER DENYING REQUEST FOR
CERTIFICATE OF APPEALABILITY
[Docket No. 19]

At Docket No. 19 Petitioner has filed a “State Prisoner and Petitioner Notice of Appeal and Motion for Leave to Proceed on Appeal In Forma Pauperis and or the Court Issue a ‘COA’ to Appeal to the Ninth Circuit.” Respondents have not filed any opposition.

Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A COA should be granted when “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.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks and citations omitted); *Hoffman v. Arave*, 455 F.3d 926, 943 (9th Cir. 2006) (same).

In this case, as noted in the Findings and Recommendations adopted by the Court, the issues raised in petition in this case duplicate the issues raised in the petition filed in *Machado v. Carey*, 2:05-cv-00278-LLK-GGH. Review of the record in that case, of which this Court takes judicial notice under Federal Rule of Evidence 201, indicates that a decision was rendered in that case, a Certificate of Appealability was granted on the issue of whether Petitioner’s plea agreement was violated, and the matter is now pending before the Court of Appeals, Case No. 07-15669. Although Petitioner is correct that the petition in this case involves a subsequent parole hearing, the legal issues presented and their factual bases are identical to those presented in the earlier case. Petitioner does not contend that the passage of time between the denial of

parole in 2000 and the denial of parole in 2005 made him more suitable for parole, which would present a different factual and legal issue than that presented in the case pending before the Ninth Circuit.

Petitioner has failed to show that reasonable jurists could debate (or agree) that the petition in this case was not properly dismissed as duplicative. Therefore, the Court declines to issue a Certificate of Appealability; any further request for a Certificate of Appealability must be addressed to the Court of Appeals. *See* Fed. R. App. P. 22(b); Ninth Circuit R. 22-1.

IT IS SO ORDERED.

Dated: January 9, 2008

s/ James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
United States District Judge