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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JERRY WAYNE SHUE, JR.,)	1:05-CV-00504 AWI JMD HC
)	
Petitioner,)	ORDER DECLINING ISSUANCE OF
)	CERTIFICATE OF APPEALABILITY
v.)	
)	
D. K. SISTO,)	
)	
Respondents.)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On February 23, 2009, Petitioner filed a motion for a certificate of appealability of the February 2, 2009, order denying his petition for a writ of habeas corpus. A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003). The controlling statute in determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

1 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal
2 may not be taken to the court of appeals from—

3 (A) the final order in a habeas corpus proceeding in which the detention complained
4 of arises out of process issued by a State court; or

5 (B) the final order in a proceeding under section 2255.

6 (2) A certificate of appealability may issue under paragraph (1) only if the applicant
7 has made a substantial showing of the denial of a constitutional right.

8 (3) The certificate of appealability under paragraph (1) shall indicate which specific
9 issue or issues satisfy the showing required by paragraph (2).

10 28 U.S.C. § 2253.

11 If a court denies a petitioner’s petition, the court may only issue a certificate of appealability
12 “if jurists of reason could disagree with the district court’s resolution of his constitutional claims or
13 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed
14 further.” Miller-El, 123 S.Ct. at 1034; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the
15 petitioner is not required to prove the merits of his case, he must demonstrate “something more than
16 the absence of frivolity or the existence of mere good faith on his . . . part.” Miller-El, 123 S.Ct. at
17 1040.

18 In the present case, the Court finds that reasonable jurists would not find the Court’s
19 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or
20 deserving of encouragement to proceed further. Here, reasonable jurists would not debate this
21 Court’s finding that Petitioner did not prove the basis of his claims, and that the state court’s
22 decision to deny the claims were contrary to clearly established federal law as set forth by the
23 Supreme Court. Accordingly, the Court hereby DENIES Petitioner's motion for certificate of
24 appealability.

25 IT IS SO ORDERED.

26 **Dated: April 6, 2009**

27 **/s/ Anthony W. Ishii**
28 **CHIEF UNITED STATES DISTRICT JUDGE**