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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN HOSKINGS,)	1:05-CV-01430 OWW SMS HC
)	
Petitioner,)	ORDER GRANTING ISSUANCE OF
)	CERTIFICATE OF APPEALABILITY
v.)	
)	
PAT L. VASQUEZ,)	
)	
Respondent.)	
_____)	

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

On December 8, 2008, the undersigned issued an [Order](#) which adopted the [Findings and Recommendation](#) of the Magistrate Judge and denied the petition for writ of habeas corpus on the merits. Pursuant to 28 U.S.C. § 2254(d), the Court found the state court’s decision that some evidence supported the parole board’s determination that Petitioner posed an unreasonable risk of danger to society if released from prison was not contrary to, and did not involve, an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States, and did not result in a decision that was based on an unreasonable determination of the facts

1 in light of the evidence presented.

2 Petitioner filed a notice of appeal on December 19, 2008. This Court did not grant or deny a
3 certificate of appealability, because prisoners challenging parole decisions via habeas corpus were
4 not required to obtain said certificates pursuant to governing circuit court precedent. See White v.
5 Lambert, 370 F.3d 1002, 1004 (9th Cir.2004); Rosas v. Nielsen, 428 F.3d 1229, 1231-32 (9th
6 Cir.2005) (per curiam). On April 22, 2010, the Ninth Circuit issued its decision in Hayward v.
7 Marshall, No. 06-55392, 2010 WL 1664977 (9th Cir. Apr. 22, 2010) (en banc). In Hayward, the
8 Ninth Circuit held, *inter alia*, that prisoners are required to obtain a certificate of appealability to
9 review the denial of a habeas petition challenging an administrative decision such as the denial of
10 parole by the parole board. Id. at *5. Pursuant to its decision in Hayward, on May 4, 2010, the Ninth
11 Circuit remanded this case to this Court for the limited purpose of granting or denying a certificate of
12 appealability.

13 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
14 district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-
15 El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue
16 a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

17 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
18 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.

19 (b) There shall be no right of appeal from a final order in a proceeding to test the
20 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
21 validity of such person's detention pending removal proceedings.

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

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

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

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

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

1 If a court denies a petitioner’s petition, the court may only issue a certificate of appealability
2 “if jurists of reason could disagree with the district court’s resolution of his constitutional claims or
3 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed
4 further.” Miller-El, 537 U.S. at 327; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the
5 petitioner is not required to prove the merits of his case, he must demonstrate “something more than
6 the absence of frivolity or the existence of mere good faith on his . . . part.” Miller-El, 537 U.S. at
7 338.

8 In the present case, the Court finds that reasonable jurists could find this Court’s
9 determination that Petitioner is not entitled to federal habeas corpus relief debatable. Accordingly, a
10 a certificate of appealability is GRANTED on the issue of whether the state court rejection of
11 Petitioner’s claim was contrary to, or involved an unreasonable application of, clearly established
12 Federal law as determined by the Supreme Court of the United States, or resulted in a decision that
13 was based on an unreasonable determination of the facts in light of the evidence presented.

14 IT IS SO ORDERED.

15 **Dated: May 4, 2010**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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