

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

RODERICK WASHINGTON,

Petitioner,

v.

JOHN DUVEY,

Respondent.

CV F 07-1615 LJO WMW HC

**ORDER DENYING
CERTIFICATE OF
APPEALABILITY**

Petitioner, a state prisoner, filed a petition for a writ of habeas corpus pursuant to 28U.S.C. § 2254. On February 6, 2008, Petitioner filed an application for a certificate of appealability. The controlling statute, 28 U.S.C. § 2253, 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.

(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--

(A) the final order in a habeas corpus proceeding in which the detention complained

1 of arises out of process issued by a State court; or
2 (B) the final order in a proceeding under section 2255.
3 (2) A certificate of appealability may issue under paragraph (1) only if the applicant
4 has made a substantial showing of the denial of a constitutional right.
5 (3) The certificate of appealability under paragraph (1) shall indicate which specific
6 issue or issues satisfy the showing required by paragraph (2).
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8 In the present case, the court finds that Petitioner has failed to carry his burden of
9 making a substantial showing of the denial of a constitutional right. Specifically, the court
10 notes that no final, appealable order has been entered in this case. Accordingly, Petitioner's
11 request for a certificate of appealability is HEREBY DENIED.
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13 IT IS SO ORDERED.

14 **Dated: February 8, 2008**

15 **/s/ Lawrence J. O'Neill**
16 **UNITED STATES DISTRICT JUDGE**
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