

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

RODERICK WASHINGTON,) CV F 07-1615 LJO WMW HC
Petitioner,) ORDER DENYING
v.) CERTIFICATE OF
JOHN DUVEY,) APPEALABILITY
Respondent.)

Petitioner, a state prisoner, filed a petition for a writ of habeas corpus pursuant to 28 U.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.
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16 **Dated: February 8, 2008** /s/ Lawrence J. O'Neill
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