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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAFT THOMPSON,)	1:09-CV-00727 AWI SMS HC
)	
Petitioner,)	
)	ORDER DENYING MOTION FOR
v.)	CERTIFICATE OF APPEALABILITY
)	[Doc. #28]
JAMES YATES,)	
)	
Respondent.)	

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

In his petition filed on April 24, 2009, Petitioner challenged the outcome of a prison disciplinary hearing. On April 5, 2010, the undersigned issued an order adopting the Findings and Recommendation of the Magistrate Judge and denying the petition on the merits. On May 6, 2010, Petitioner filed a motion for certificate of appealability along with a notice of appeal.

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

1 validity of a warrant to remove to another district or place for commitment or trial
2 a person charged with a criminal offense against the United States, or to test the
3 validity of such person's detention pending removal proceedings.

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

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

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

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

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

14 If a court denies a petitioner's petition, the court may only issue a certificate of appealability
15 "if jurists of reason could disagree with the district court's resolution of his constitutional claims or
16 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed
17 further." Miller-El, 123 S.Ct. at 1034; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the
18 petitioner is not required to prove the merits of his case, he must demonstrate "something more than
19 the absence of frivolity or the existence of mere good faith on his . . . part." Miller-El, 123 S.Ct. at
20 1040.

21 In the present case, the Court finds that reasonable jurists would not find the Court's
22 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or
23 deserving of encouragement to proceed further. Petitioner has not made the required substantial
24 showing of the denial of a constitutional right. Accordingly, the Court hereby DENIES Petitioner's
25 motion for certificate of appealability.

26 IT IS SO ORDERED.

27 **Dated: May 12, 2010**

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