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

THEODORE BLACKMON,)	1:09-CV-01138 AWI SMS HC
)	
Petitioner,)	ORDER DENYING APPLICATION
v.)	FOR CERTIFICATE OF
)	APPEALABILITY
ROBERT HOREL, Warden,)	
)	(Docket #19)
Respondent.)	
)	
)	

Petitioner Theodore Blackmon filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 9, 2010, the court denied the petition. On March 8, 2010, Petitioner filed an application for certificate of appealability.

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, 537 U.S. 322, 335-36 (2003). The controlling statute 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.
- (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 of arises out of process issued by a State court; or

- 1 (B) the final order in a proceeding under section 2255.
2 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has
3 made a substantial showing of the denial of a constitutional right.
4 (3) The certificate of appealability under paragraph (1) shall indicate which specific issue
5 or issues satisfy the showing required by paragraph (2).

6 If the court denies a Petitioner’s petition, the court may only issue a certificate of appealability “if
7 jurists of reason could disagree with the district court's resolution of his constitutional claims or
8 that jurists could conclude the issues presented are adequate to deserve encouragement to
9 proceed further.” Miller-El, 537 U.S. at 327; Slack v. McDaniel, 529 U.S. 473, 484 (2000).

10 In this action, the court finds that reasonable jurists would not disagree with this court’s
11 finding that there was sufficient evidence to support the murder conviction.

12 Accordingly, the court hereby ORDERS that Petitioner’s application for a certificate of
13 appealability is DENIED.

14 IT IS SO ORDERED.

15 Dated: March 31, 2010

16 /s/ Anthony W. Ishii
17 CHIEF UNITED STATES DISTRICT JUDGE