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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK D. FOLEY,

 Petitioner,

 v.

MARTIN BITER,

 Respondent.

No. 2:01-cv-00714 MCE GGH (P)

ORDER

On July 14, 2015, the United States Court of Appeals for the Ninth Circuit reversed this Court’s September 28, 2012 Order (ECF No. 40), which denied Petitioner’s Motion for Relief from Judgment (ECF No. 28). ECF No. 48. The Ninth Circuit remanded for further proceedings, finding that Petitioner’s counsel had abandoned him, which prevented Petitioner from timely appealing the denial of his habeas petition. On August 19, 2015, this Court granted relief from judgment, vacated the judgment, and then re-entered judgment; Petitioner was directed to file a notice of appeal and motion for certificate of appealability within thirty days. ECF No. 51. Petitioner timely filed a motion for certificate of appealability on September 2, 2015. ECF No. 53.

Before petitioner can appeal this Court’s decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of appealability may issue under 28


1 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a
2 constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate
3 which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3). A certificate of
4 appealability should be granted for any issue that petitioner can demonstrate is “debatable among
5 jurists of reason,” could be resolved differently by a different court, or is “adequate to deserve
6 encouragement to proceed further.” Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir. 2002)
7 (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

8 For the reasons set forth in the magistrate judge’s July 1, 2004 Findings and
9 Recommendations (ECF No. 18), Petitioner has not made a substantial showing of the denial of a
10 constitutional right. Accordingly, IT IS HEREBY ORDERED that:

- 11 1. A certificate of appealability should not issue in this action.
- 12 2. Petitioner’s Motion for Certificate of Appealability (ECF No. 53) is DENIED.
- 13 3. The Clerk of the Court shall serve this order on the United States Court of Appeals for
14 the Ninth Circuit.

15 IT IS SO ORDERED.

16 Dated: September 25, 2015

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19 MORRISON C. ENGLAND, JR., CHIEF JUDGE
20 UNITED STATES DISTRICT COURT
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27 ¹ Except for the requirement that appealable issues be specifically identified, the standard
28 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.