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

WENDELL STUART,
Petitioner,

No. 2:03-cv-00128-MCE-JFM (HC)

vs.

ORDER

T. CAREY, Warden, et al.,
Respondents.

_____ /

This matter has been remanded to this court from the United States Court of Appeals for the Ninth Circuit for the limited purpose of granting or denying a certificate of appealability. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

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1 A certificate of appealability should be granted for any issue that petitioner can
2 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different
3 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
4 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

5 Petitioner has made a substantial showing of the denial of a constitutional right in
6 the following issue presented in the instant petition: Whether petitioner’s right to due process
7 was violated by the California Board of Prison Terms’ June 26, 2001 decision to deny him a
8 parole date.

9 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
10 issued in the present action.

11 Dated: August 27, 2010

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13 MORRISON C. ENGLAND, JR.
14 UNITED STATES DISTRICT JUDGE

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26 ¹ Except for the requirement that appealable issues be specifically identified, the standard
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.