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

WADE FELIX THORNTON,

Petitioner,

No. CIV S-03-0755 MCE DAD P

vs.

DIANE BUTLER,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's November 9, 2009 denial of his application for a writ of habeas corpus. Before petitioner can appeal this 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 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 court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).


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1 For the reasons set forth in the magistrate judge's July 28, 2009 findings and
2 recommendations, petitioner has not made a substantial showing of the denial of a constitutional
3 right. Accordingly, a certificate of appealability should not issue in this action.

4 IT IS SO ORDERED.

5 Dated: December 23, 2009

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8 MORRISON C. ENGLAND, JR.
9 UNITED STATES DISTRICT JUDGE
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