

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

LARRY DUN,

Petitioner,

No. CIV S-05-2092 WBS CHS P

VS.

ROSANNE CAMPBELL, et al.,

Respondent.

ORDER

Petitioner, a state prisoner proceeding through counsel, challenged the execution of his sentence in an application for writ of habeas corpus which was denied by this court in an order dated October 2, 2009. Petitioner filed a timely notice of appeal and his appeal was processed to the United States Court of Appeals for the Ninth Circuit.

On June 15, 2010, the case was remanded to this court for the limited purpose of granting or denying a certificate of appealability in light of *Hayward v. Marshall*, No. 06-55392, 2010 WL 1664977, at *5 (9th Cir. Apr. 22, 2010) (en banc) (overruling portions of earlier cases that relieved a prisoner from obtaining a certificate of appealability to review the denial of a habeas petition challenging an administrative decision to deny parole).

11111

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

5 A certificate of appealability should be granted for any issue that petitioner can
6 demonstrate is ““debatable among jurists of reason,”” could be resolved differently by a different
7 court, or is ““adequate to deserve encouragement to proceed further.”” *Jennings v. Woodford*,
8 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).¹

9 Here, for the reasons set forth in the magistrate judge’s findings and
10 recommendations filed July 31, 2009, petitioner failed to make a substantial showing of the
11 denial of a constitutional right. Accordingly, a certificate of appealability shall not issue in this
12 case.

13 IT IS SO ORDERED.

14 DATED: June 23, 2010

15 
16 WILLIAM B. SHUBB
17 UNITED STATES DISTRICT JUDGE

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