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

CURTIS LEE MORRISON,

Petitioner,

No. CIV S-06-284 MCE CHS P

vs.

THOMAS CAREY, Warden,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, challenged the execution of his sentence in an application for writ of habeas corpus which was denied by this court on January 14, 2010. Petitioner filed a timely notice of appeal and his appeal was processed to the United States Court of Appeals for the Ninth Circuit.

On May 25, 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).

A certificate of appealability may issue under 28 U.S.C. § 2253 “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

1 The certificate of appealability must “indicate which specific issue or issues satisfy” the
2 requirement. 28 U.S.C. § 2253(c)(3).

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

7 Here, petitioner challenged a December 17, 2003 decision of the Board of Prison
8 Terms finding him unsuitable for parole. There was some evidence in the record to support the
9 Board’s decision that petitioner was not suitable for parole. Moreover, it is clear that the Board’s
10 denial of parole has not caused petitioner to serve a constitutionally disproportionate sentence for
11 his offense. Petitioner failed to make a substantial showing of the denial of a constitutional right
12 with respect to the Board’s decision. Accordingly, a certificate of appealability shall not issue in
13 this case.

14 IT IS SO ORDERED.

15 Dated: May 28, 2010

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18 MORRISON C. ENGLAND, JR.
19 UNITED STATES DISTRICT JUDGE
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 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.