

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

EARL PRICE, 2:06-cv-01865-ATG (HC)

Petitioner, **ORDER DENYING CERTIFICATE OF APPEALABILITY**

VS.

DK SISTO

(DOCUMENT # 34)

### Respondent.

Petitioner is a state prisoner proceeding pro se in a habeas corpus action pursuant to 28 U.S.C. § 2254. On January 7, 2009, this court dismissed his petition for habeas corpus. On January 26, 2009, petitioner filed a timely notice of appeal and requested a certificate of appealability from this court. Pursuant to 28 U.S.C. § 2253(c)(2), "[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." Petitioner's notice of appeal did not attempt to make the required "substantial showing."

On February 2, 2009, this court entered an order to show cause why he is entitled to a certificate of appealability. Petitioner was given 14 days from the date of the order in which to respond. The allotted time has passed and Petitioner has failed to respond. Therefore, he has failed to make the showing required to establish that he is entitled to a certificate of appealability.

For these reasons, the Court declines to issue a certificate of appealability. Any further request for a certificate of appealability must be addressed to the Court of Appeals. *See* Fed. R. App. P. 22(b); Ninth Circuit R. 22-1.

Dated: April 10, 2009

/s/ Alfred T. Goodwin

ALFRED T. GOODWIN.  
United States Circuit Judge  
Sitting by designation