

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

JOHN BURNIGHT, No. 2:06-cv-02398-MCE-CHS P

Petitioner,

VS.

ORDER

THOMAS CAREY, Warden, et al.,

Respondents.

Petitioner, a state prisoner proceeding pro se, challenged the execution of his sentence in application for writ of habeas corpus which was denied by this court on April 28, 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 June 4, 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 those 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).

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

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

Here, petitioner failed to make a substantial showing of the denial of a constitutional right with respect to his due process claim. A certificate of appealability shall not issue in this case.

IT IS SO ORDERED.

Dated: June 8, 2010


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

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.