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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JOHN BURNIGHT,

No. 2:06-cv-02398-MCE-CHS P

12 Petitioner,

13 vs.

ORDER

14 THOMAS CAREY, Warden, et al.,

15 Respondents.
16 _____/

17 Petitioner, a state prisoner proceeding pro se, challenged the execution of his sentence in
18 an application for writ of habeas corpus which was denied by this court on April 28, 2010.

19 Petitioner filed a timely notice of appeal and his appeal was processed to the United States Court
20 of Appeals for the Ninth Circuit.

21 On June 4, 2010, the case was remanded to this court for the limited purpose of granting
22 or denying a certificate of appealability in light of *Hayward v. Marshall*, No. 06-55392, 2010 WL
23 1664977, at *5 (9th Cir. Apr. 22, 2010) (en banc) (overruling those portions of earlier cases that
24 relieved a prisoner from obtaining a certificate of appealability to review the denial of a habeas
25 petition challenging an administrative decision to deny parole).

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1 A certificate of appealability may issue under 28 U.S.C. § 2253 “if the applicant has made
2 a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The
3 certificate of appealability must “indicate which specific issue or issues satisfy” the requirement.
4 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, petitioner failed to make a substantial showing of the denial of a constitutional right
10 with respect to his due process claim. A certificate of appealability shall not issue in this case.

11 IT IS SO ORDERED.

12 Dated: June 8, 2010

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14 MORRISON C. ENGLAND, JR.
15 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.