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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN JACKSON,

NO. CIV. S-06-2646 LKK/CHS P

Petitioner,

v.

O R D E R

ROBERT A. HOREL, et al.,

Respondents.

_____ /

Petitioner, a state prisoner proceeding pro se, applied for a writ of habeas corpus challenging the California Board of Parole Hearings's determination that petitioner was unsuitable for parole. In an order filed November 24, 2009, the court denied this petition on the merits, concluding that the Board's decision was supported by some evidence.

Petitioner has sought to appeal this decision. In Hayward v. Marshall, No. 06-55392, 2010 WL 1664977, at *5 (9th Cir. Apr. 22, 2010) (en banc), the Ninth Circuit held that petitioners challenging parole decisions must obtain a certificate of appealability before the circuit court will entertain an appeal. Consistent with this holding, the Ninth Circuit's appellate commissioner has remanded petitioner's appeal to this court for a

1 determination as to whether a certificate of appealability should
2 issue.


3 “Where a district court has rejected the constitutional claims
4 on the merits, the showing required to satisfy [28 U.S.C.] §
5 2253(c) is straightforward: The petitioner must demonstrate that
6 reasonable jurists would find the district court’s assessment of
7 the constitutional claims debatable or wrong.” Slack v. McDaniel,
8 529 U.S. 473, 484 (2000). In this case, the magistrate judge’s
9 findings and recommendations, which this court adopted in full,
10 concluded that petitioner’s extensive record of prison misconduct
11 and his criminal history (not including the commitment offense)
12 constituted some evidence of future dangerousness for purposes of
13 federal habeas review. It does not appear that reasonable jurists
14 could disagree with this conclusion.

15 Accordingly, the court DECLINES to issue a certificate of
16 appealability.

17 IT IS SO ORDERED.

18 DATED: May 10, 2010.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT