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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRENT KENNETH TYLER,

No. 2:07-cv-00367 JCW

Petitioner,

ORDER

vs.

DARRAL G. ADAMS,

Respondent.

Tyler, a state prisoner, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his sentence of 25 years to life, imposed pursuant to his guilty plea on one count of penetration with a foreign object, with enhancements admitted for committing that crime during a burglary and for involving binding the victim. On March 23, 2010, I ordered that the petition be denied. Tyler has now requested a Certificate of Appealability (COA) as to his claims (1) that his sentence was disproportionate to his crime in violation of the Eighth Amendment to the United States Constitution; (2) that he did not knowingly and intelligently waive his right to appeal the disproportionality of his sentence; and (3) alternatively, that if his

1 waiver was valid, he received ineffective assistance of counsel because his counsel
2 could have had no rational, tactical reason for allowing Tyler to waive his right to
3 appeal his sentence.

4 “A COA may issue ‘only if the applicant has made a substantial showing of
5 the denial of a constitutional right.’” *Rhoades v. Henry*, 598 F.3d 511, *5 (9th Cir.
6 2010), citing 28 U.S.C. § 2253(c)(2). A petitioner must establish that “reasonable
7 jurists could debate whether . . . the petition should have been resolved in a different
8 manner or that the issues presented were ‘adequate to deserve encouragement to
9 proceed further.’” *Id.*, citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

10 For the reasons stated in my order denying Tyler’s petition for a writ of
11 habeas corpus, Tyler has failed to establish that jurists of reason could debate
12 whether the petition should have been resolved in a different manner, or that the
13 issues presented deserve encouragement to proceed further.

14 It is therefore ordered that I decline to issue a Certificate of Appealability.
15 Any further request for a Certificate of Appealability must be addressed to the Court
16 of Appeals. *See* Fed. R. App. P. 22(b); Ninth Cir. R. 22-1.

17
18 DATED: April 16, 2010

19 /s/ J. Clifford Wallace

J. Clifford Wallace
United States Circuit Judge