

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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RICKY LOUA THOR

NO. CIV. S-07-0683 ALA P  
Crt. of App. No. 08-7060

ORDER ISSUING A CERTIFICATE OF  
APPEALABILITY

V.

D. K. SISTO,

### Respondent.

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By written Order filed July 25, 2008, Senior Circuit

20 Judge Arthur L. Alarcón denied petitioner Ricky Lua Thor's  
21 application for a writ of habeas corpus. On September 4, 2008,  
22 petitioner filed written Notice of Appeal from that Order. On  
23 September 30, 2008, Judge Alarcón entered an order granting  
24 petitioner's motion to reopen the time to file an appeal pursuant  
25 to Fed. R. App. P. 4(a)(6), and subsequently withdrew from  
26 handling this case.

27 On June 15, 2010, the clerk of this court received  
28 notice from Appellate Commissioner Peter L. Shaw advising that

1 the district court had not issued or declined to issue a  
2 certificate of appealability pursuant to 28 U.S.C. § 2253, and  
3 remanding the matter to this court for the limited purpose of  
4 granting or denying a certificate of appealability. The matter  
5 was reassigned to the undersigned judge for purposes of  
6 responding to the Appellate Commissioner's Order.

7 A certificate of appealability may issue under 28  
8 U.S.C. § 2253 "only if the applicant has made a substantial  
9 showing of the denial of a constitutional right." 28 U.S.C.  
10 § 2253(c)(2). The certificate of appealability must "indicate  
11 which specific issue or issues satisfy" the requirement. 28  
12 U.S.C. § 2253(c)(3).

13 A certificate of appealability should be granted for  
14 any issue that petitioner can demonstrate is "'debatable among  
15 jurists of reason,'" could be resolved differently by a different  
16 court, or is "'adequate to deserve encouragement to proceed  
17 further.'" Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir.  
18 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

19 This court has carefully reviewed Judge Alarcón's Order  
20 of July 25, 2008, and concludes that reasonable jurists could  
21 differ on the question of whether the state court's decision that  
22 the California Board of Parole Hearings' determination that  
23 petitioner was unsuitable for parole was supported by some evidence  
24 constituted an unreasonable application of the "some evidence"  
25 principle articulated in Superintendent v. Hill, 472 U.S. 445,  
26 454 (1985).

27 IT IS THEREFORE ORDERED that a certificate of  
28 appealability is hereby issued.

1 DATED: July 16, 2010

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3 WILLIAM B. SHUBB

4 UNITED STATES DISTRICT JUDGE

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