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

ALLEN R. TURK,

Petitioner,

No. CIV S-07-1082 FCD CHS P

vs.

CALIFORNIA BOARD OF PAROLE HEARINGS,

Respondent.

ORDER

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Petitioner, a state prisoner proceeding pro se, challenged the execution of his sentence in an application for writ of habeas corpus which was denied by this court on November 4, 2009. 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 11, 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). In relevant part, the *Hayward* decision overruled portions of earlier Ninth Circuit cases which relieved a prisoner from

1 obtaining a certificate of appealability to appeal the denial of a habeas petition challenging an
2 administrative decision to deny parole.

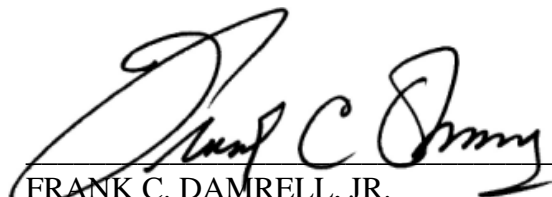
3 A certificate of appealability may issue under 28 U.S.C. § 2253 “if the applicant
4 has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).
5 The certificate of appealability must “indicate which specific issue or issues satisfy” the
6 requirement. 28 U.S.C. § 2253(c)(3).

7 A certificate of appealability should be granted for any issue that petitioner can
8 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different
9 court, or is “adequate to deserve encouragement to proceed further.” *Jennings v. Woodford*,
10 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).¹

11 Here, the decision of the Board of Parole Hearings that petitioner was not suitable
12 for parole was clearly supported by some evidence in the record. Petitioner failed to make a
13 substantial showing in his petition of the denial of a constitutional right. Accordingly, a
14 certificate of appealability shall not issue in this case.

15 IT IS SO ORDERED.

16 DATED: June 15, 2010.

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19 FRANK C. DAMRELL, JR.
20 UNITED STATES DISTRICT JUDGE
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25 ¹ Except for the requirement that appealable issues be specifically identified, the
26 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.