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

RICHARD H. CAREY,
Petitioner,

No. 2:07-cv-01642-MCE-CHS-P

v.

ORDER

D.K. SISTO, Warden,
Respondent.

_____ /

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 10, 2010. Petitioner filed a timely notice of appeal and his appeal was processed to the United States Court of Appeals for the Ninth Circuit.

On July 7, 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) (overruling portions of earlier cases that relieved a prisoner from obtaining a certificate of appealability to review the denial of a habeas 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 In this case, there was some evidence to support the decision of the Board of Parole
10 Hearings that petitioner was not suitable for parole. Accordingly, petitioner has failed to make a
11 substantial showing of the denial of a constitutional right and a certificate of appealability shall
12 not issue in this case.

13 IT IS SO ORDERED.

14 Dated: July 13, 2010

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16 MORRISON C. ENGLAND, JR.
17 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.