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

ROGER BETTENCOURT,

Petitioner,

No. CIV S-07-2246 FCD DAD P

vs.

MIKE KNOWLES, Warden,

Respondent.

ORDER

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 2, 2010, the Court issued an Order that denied the petition for writ of habeas corpus on the merits. Petitioner filed a notice of appeal on March 4, 2010. This Court did not grant or deny a certificate of appealability, because prisoners challenging parole decisions via habeas corpus were not required at that time to obtain said certificates pursuant to governing circuit court precedent. See White v. Lambert, 370 F.3d 1002, 1004 (9th Cir. 2004); Rosas v. Nielsen, 428 F.3d 1229, 1231-32 (9th Cir. 2005).

On April 22, 2010, the Ninth Circuit issued its decision in Hayward v. Marshall, No. 06-55392, 2010 WL 1664977 (9th Cir. Apr.22, 2010) (en banc). In Hayward, the Ninth Circuit overruled White and Rosas and held, inter alia, that prisoners are required to obtain a certificate of appealability to review the denial of a habeas petition challenging an administrative

1 decision such as the denial of parole by the parole board. Id. at *5. Pursuant to its en banc
2 decision in Hayward, on May 20, 2010, the Ninth Circuit remanded this case for the limited
3 purpose of granting or denying a certificate of appealability.

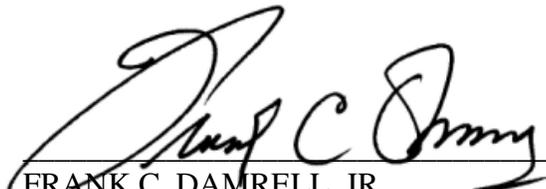
4 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
5 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
6 § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues
7 satisfy” the requirement. 28 U.S.C.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

8 “The standard for a certificate of appealability is lenient.” Hayward, 2010 WL
9 1664977, at *4. A petitioner need only “show that reasonable jurists could debate the district
10 court’s resolution or that the issues are adequate to deserve encouragement to proceed further.”
11 Id. (internal quotations omitted). See also Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003);
12 Barefoot v. Estelle, 463 U.S. 880, 893 (1983); Jennings v. Woodford, 290 F.3d 1006, 1010 (9th
13 Cir. 2002).¹

14 Here, petitioner has made a substantial showing of the denial of a constitutional
15 right in the following issue presented in the instant petition: whether the failure of the California
16 Board of Prison Terms to find petitioner suitable for parole at a hearing on December 27, 2005
17 violated his right to due process.

18 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
19 issued in the present action.

20 DATED: June 4, 2010.

21 
22 FRANK C. DAMRELL, JR.
23 UNITED STATES DISTRICT JUDGE

24 _____
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 v. Woodford, 290 F.3d 1006, 1010 (9th Cir.
2002) .