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

PHILLIP VILLANUEVA,

Petitioner,

No. CIV S-07-2281 WBS CHS P

vs.

MIKE EVANS,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, has filed a timely notice of appeal of this court’s May 5, 2009 order denying his application for writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

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

A certificate of appealability should be granted for any issue that petitioner can demonstrate is “debatable among jurists of reason,” could be resolved differently by a different court, or is “adequate to deserve encouragement to proceed further.” *Jennings v. Woodford*,

1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).¹

2 Petitioner has not met this standard. Federal habeas corpus relief is not available
3 for the alleged error in application of California sentencing law. Petitioner has not properly
4 alleged a violation of the Constitution or laws of the United States. Although his claim based on
5 *Blakely v. Washington*, 542 U.S. 296 (2004) arguably raised constitutional implications, for the
6 reason set forth in the Magistrate Judge's Findings and Recommendations, that claim is moot.

7 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability shall
8 not issue in the present action.

9 DATED: July 8, 2009

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11 WILLIAM B. SHUBB
12 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.