

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA-SACRAMENTO DIVISION

JAMES TAYLOR,
REGINALD E.B. SCOTT,
Petitioner,
v.
D.K. SISTO, Warden,
Respondent.) 2:7 CV 2427-GW
) ORDER GRANTING IN FORMA
PAUPERIS STATUS ON APPEAL;
ORDER DENYING CERTIFICATE
OF APPEALABILITY

Under Title 28, Section 2253, the right to appeal a final order in a habeas proceeding requires that petitioner obtain a Certificate of Appealability. 28 U.S.C. § 2253(c)(1)(A). A Certificate of Appeal is required when a district court denies a state prisoner's habeas petition challenging the denial of parole. Hayward v. Marshall, 603 F.3d 546, 552-55 (9th Cir. 2010), overruled on other grounds by Swarthout v. Cooke, 131 S.Ct. 859, 178 L.Ed.2d 732 (2011). Both circuit judges and district judges have the authority to issue Certificates of Appealability. U.S. v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997).

1 With respect to a Certificate of Appealability, the district court “shall indicate
2 which specific issue or issues satisfy the standard for issuing a certificate, or state
3 its reasons why a certificate should not be granted.” *Id.*

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5 I. IN FORMA PAUPERIS STATUS IS GRANTED

6 An appeal may be taken in forma pauperis unless this Court certifies that it
7 is not taken in good faith. 28 U.S.C. § 1915(a)(3). The good faith test is a liberal
8 one and is satisfied if any issue appealed is not frivolous. Gardner v. Pogue, 558
9 F.2d 548, 551 (9th Cir. 1977). An appeal “is frivolous where it lacks an arguable
10 basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct.
11 1827, 104 L.Ed.2d 338 (1989).

12 In practical terms, the request of an indigent petitioner for leave to appeal in
13 forma pauperis must be allowed unless the issues raised are so frivolous that such
14 an appeal would be dismissed if appellant were a nonindigent litigant. Gardner v.
15 Pogue, supra. By this liberal standard, it cannot be said that petitioner's appeal is
16 not taken in good faith within the meaning of 28 U.S.C. § 1915(a)(3). However,
17 nothing in this determination is to be construed as eliminating the requirements of
18 28 U.S.C. § 1915(b)(1).

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20 II. THE APPLICATION FOR A CERTIFICATE OF APPEALABILITY
21 IS DENIED

22 A Certificate of Appealability is to be granted only if the petitioner makes a
23 “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2);
24 see Barefoot v. Estelle, 463 U.S. 880, 893, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983).
25 A substantial showing of the denial of a constitutional right “includes showing that
26 reasonable jurists could debate whether (or, for that matter, agree that) the petition
27 should have been resolved in a different manner or that the issues presented were
28 ‘adequate to deserve encouragement to proceed further.’” Slack v. McDaniel, 529

1 U.S. 473, 483-84, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000), citing Barefoot, supra,
2 463 U.S. at 893 n. 4. See also Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S.Ct.
3 1029, 154 L.Ed. 2d 931 (2003); Nevius v. McDaniel, 218 F.3d 940, 946 (9th Cir.
4 2000); Alexander v. Johnson, 211 F.3d 895, 896-97 (5th Cir. 2000). “Where a
5 district court has rejected the constitutional claims on the merits, the showing
6 required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate
7 that reasonable jurists would find the district court’s assessment of the
8 constitutional claims debatable or wrong.” Slack, supra, 529 U.S. at 484.

9 As set forth in the Memorandum Decision adopted by the Court, petitioner
10 has not presented a colorable claim for federal habeas corpus relief. Accordingly,
11 petitioner has not made a substantial showing that he has been denied a
12 constitutional right.

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14 ORDER

15 Therefore, pursuant to 28 U.S.C. § 1915(a)(3), the Court GRANTS
16 petitioner’s Motion to Proceed on Appeal In Forma Pauperis and, pursuant to 28
17 U.S.C. § 2253, the Court DENIES the Application for a Certificate of Appealability.

18 DATED: July 5, 2011

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GEORGE H. WU
22 UNITED STATES DISTRICT JUDGE
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