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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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FRANK THOMPSON,
Petitioner,

v.
D. K. SISTO,
Respondent.

NO. CIV. 2:07-2577 WBS JFM (HC)
ORDER ISSUING A CERTIFICATE OF
APPEALABILITY

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In an Order filed April 12, 2010, this court denied petitioner Frank Thompson's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 et seq. 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 § 2253 "only 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. Id. § 2253(c)(3).

1 A certificate of appealability should be granted for
2 any issue that petitioner can demonstrate is "'debatable among
3 jurists of reason,'" could be resolved differently by a different
4 court, or is "'adequate to deserve encouragement to proceed
5 further.'" Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir.
6 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).
7 In light of the differing conclusions reached by the undersigned
8 and the assigned Magistrate Judge, "jurists of reason" could
9 reach different conclusions with respect to the merits of
10 petitioner's petition.

11 The court therefore issues a certificate of
12 appealability on the issue of whether the state court
13 unreasonably concluded that the parole board's decision satisfied
14 the "some evidence" standard because the parole board's reliance
15 on the nature of petitioner's offenses violated his due process
16 rights as warned against in Biggs v. Terhune, 334 F.3d 910 (9th
17 Cir. 2003), Sass v. Cal. Bd. of Prison Terms, 461 F.3d 1123,
18 1128-29 (9th Cir. 2006), and Irons II v. Carey, 505 F.3d 846, 850
19 (9th Cir. 2007).

20 IT IS SO ORDERED.

21 DATED: April 13, 2010

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24 WILLIAM B. SHUBB
25 UNITED STATES DISTRICT JUDGE
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