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

LAFAYETTE COLLINS,

Petitioner,

No. CIV S-07-2709 MCE CHS P

vs.

M.C. KRAMER, et al.,

ORDER

Respondent. _____

_____ /

On November 12, 2009, this court denied petitioner’s application for writ of habeas corpus brought pursuant to 28 U.S.C. §§ 2254. At issue was the execution of petitioner’s sentence for a 1984 first degree murder conviction in the Napa County Superior Court and, specifically, a 2005 determination that he was not suitable for parole. Petitioner has properly appealed this court’s judgment to the Ninth Circuit Court of Appeals.


On May 13, 2010, the case was remanded to this court for the limited purpose of granting or denying a certificate of appealability pursuant to the Ninth Circuit’s recent holding in *Hayward v. Marshall*, No. 06-55392, slip op. at 5 (9th Cir. April 22, 2010) (en banc) (overruling portions of earlier decisions which relieved a prisoner from obtaining a certificate of appealability to review the denial of a habeas corpus petition challenging an administrative decision to deny parole).

1 A certificate of appealability may issue under 28 U.S.C. § 2253 “if the applicant
2 has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).
3 The certificate of appealability must “indicate which specific issue or issues satisfy” the
4 requirement. 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, petitioner has failed to make a substantial showing of the denial of a
10 constitutional right. Accordingly, IT IS HEREBY ORDERED that a certificate of appealability
11 shall not issue in the present action.

12 Dated: May 26, 2010

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14 MORRISON C. ENGLAND, JR.
15 UNITED STATES DISTRICT JUDGE

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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.