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

MICHAEL R. SCOTT,

Petitioner,

No. CIV S-07-cv-2729 LKK JFM (HC)

vs.

M.C. KRAMMER, Warden,

Respondent.

ORDER

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Petitioner, a federal prisoner proceeding pro se, has timely filed a notice of appeal of this court's July 27, 2010 dismissal of petitioner's petition for writ of habeas corpus.

In the petition, petitioner sought habeas relief on the grounds that (1) the prosecutor's peremptory strikes of African-Americans from the jury panel were based on race in violation of Batson v. Kentucky, 476 U.S. 79 (1986); (2) the prosecutor's peremptory strikes of the African-Americans from the jury panel violated those jurors' equal protection rights, as protected by the Fourteenth Amendment; and (3) the trial court's failure to give a jury instruction on the defense of unconsciousness violated petitioner's due process rights and right to a fair trial.


A petitioner may not appeal a final order in a federal habeas corpus proceeding without first obtaining a certificate of appealability (formerly known as a certificate of probable cause to appeal). See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A judge shall grant a

1 certificate of appealability “only if the applicant has made a substantial showing of the denial of a  
2 constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate must indicate which issues satisfy  
3 this standard. See id. § 2253(c)(3). “Where a district court has rejected the constitutional claims  
4 on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must  
5 demonstrate that reasonable jurists would find the district court's assessment of the constitutional  
6 claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473 (2000). If the certificate is  
7 granted, the court must specify the issue or issues it has found to satisfy the standard for granting  
8 a COA. 28 U.S.C. § 2253(c)(3)

9           The court concludes that reasonable jurists might find the result on petitioner’s  
10 first and second issues to be debatable. Thus, the court issues a certificate of appealability only as  
11 to the first two issues. It is denied as to the remaining issue for the reasons set out in the  
12 magistrate judge’s May 7, 2010 findings and recommendations.

13           IT IS SO ORDERED.

14 DATED: May 6, 2011.

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17 LAWRENCE K. KARLTON  
18 SENIOR JUDGE  
19 UNITED STATES DISTRICT COURT  
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