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

CLARENCE JOSEPH HAYES,

Petitioner,

No. 2-07-cv-2755-WBS-JFM (HC)

vs.

DEBERA DEXTER, et al.,

Respondents.

ORDER DENYING CERTIFICATE OF
APPEALABILITY

_____ /

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

In the petition, petitioner sought habeas relief on the grounds that (1) he did not forfeit his claims raised herein by failing to object in the trial court to his full-term consecutive and upper-term sentence, which he alleges violates his Fifth, Sixth and Fourteenth Amendment rights; (2) he was denied effective assistance of counsel when his trial attorney failed to object to the sentence imposed; and (3) his sentence violates the Eighth Amendment.

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

9 Upon review, the court declines to issue a certificate of appealability for the
10 reasons forth in the magistrate judge’s August 3, 2010 findings and recommendations.

11 IT IS SO ORDERED.

12 DATED: May 3, 2011

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15 WILLIAM B. SHUBB
16 UNITED STATES DISTRICT JUDGE
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