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

RANDOLPH M. DIAZ,

Petitioner,

No. CIV S-08-0403 LKK GGH P

vs.

MICHAEL KNOWLES, et al.,

Respondents.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's March 18, 2009 denial of his application for a writ of habeas corpus. 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 28 U.S.C. § 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 court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

For the reasons set forth in the magistrate judge’s January 7, 2009 findings and recommendations, petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly, a certificate of appealability should not issue in this action.

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IT IS SO ORDERED.

DATED: September 1, 2009.



LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT