

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

JARVELL DEANDRE SMART, No. CIV S-08-0739-WBS-CMK-F

Petitioner,

VS.

ORDER

ANTHONY HEDGPETH, et al.,

Respondents.

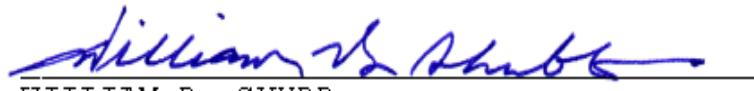
Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner's request for a writ of appealability (Doc. 40).

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. See 28 U.S.C. § 2253©; 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. See Fed. R. App. P.

1 22(b); but see Woods v. Carey, 525 F.3d 886 (9th Cir. 2008) (citing White v. Lambert, 370 F.3d
2 1002, 1010 (9th Cir. 2004), and suggesting that a certificate of appealability is not required in
3 cases where petitioner challenges the denial of parole). For the reasons set forth in the
4 Magistrate Judge's January 12, 2009, findings and recommendations, petitioner has not made a
5 substantial showing of the denial of a constitutional right.

6 Accordingly, IT IS HEREBY ORDERED that petitioner's request for a certificate
7 of appealability (Doc. 40) is denied.

8 Dated: April 2, 2009

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10 WILLIAM B. SHUBB
11 UNITED STATES DISTRICT JUDGE

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