

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

DARRYL OAK,

Petitioner,

No. CIV S-08-1005 GEB GGH P

vs.

D. K. SISTO,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, seeks a certificate of appealability for this court’s January 31, 2011 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).

////

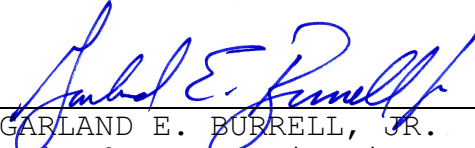
////

1 For the reasons set forth in the magistrate judge's November 18, 2010 findings
2 and recommendations, and also in light of the United States Supreme Court's recent decision in
3 Swarthout v. Cooke, 502 U.S. ___, ___ S. Ct. ___, 2011 WL 197627 *2 (Jan. 24, 2011),
4 petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly,
5 a certificate of appealability should not issue in this action.

6 IT IS HEREBY ORDERED THAT:

- 7 1. A certificate of appealability shall not issue in this action; and
- 8 2. Petitioner's February 8, 2011 motion for clarification of order adopting findings
9 and recommendations is denied as moot.

10 Dated: February 25, 2011

11
12 
13 _____
GARLAND E. BURRELL, JR.
United States District Judge