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

DAVID WESSEL,

Petitioner,

No. CIV S-08-1082 WBS CHS P

vs.

D.K. SISTO, et al.,

Respondents.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On December 8, 2010, the magistrate judge’s findings and recommendations were filed and served on all parties. The findings and recommendations contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Petitioner filed objections to the magistrate judge’s findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis. The petition will be denied.

1 If petitioner wishes to appeal the court's decision, a certificate of appealability
2 must issue. 28 U.S.C. § 2253(c)(1); *Hayward v. Marshall*, 603 F.3d 546, 554 (9th Cir. 2010) (en
3 banc). A certificate of appealability may issue where "the applicant has made a substantial
4 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A certificate of
5 appealability should be granted for any issue that petitioner can demonstrate is "debatable
6 among jurists of reason," could be resolved differently by a different court, or is "adequate to
7 deserve encouragement to proceed further." *Jennings v. Woodford*, 290 F.3d 1006, 1010 (9th
8 Cir. 2002) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).¹ The certificate of
9 appealability must "indicate which specific issue or issues satisfy" the requirement. 28 U.S.C.
10 § 2253(c)(3).

11 Here, petitioner failed to make a substantial showing of the denial of a
12 constitutional right with respect to the state parole authority's denial of parole. Accordingly, a
13 certificate of appealability shall not issue in this case

14 IT IS HEREBY ORDERED that:

- 15 1. The findings and recommendations filed December 8, 2010 are adopted in full;
- 16 2. Petitioner's application for a writ of habeas corpus is denied; and
- 17 3. A certificate of appealability shall not issue.

18 DATED: December 30, 2010

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20 WILLIAM B. SHUBB
21 UNITED STATES DISTRICT JUDGE
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25 ¹ Except for the requirement that appealable issues be specifically identified, the
26 standard for issuance of a certificate of appealability is the same as the standard that applied to
issuance of a certificate of probable cause. *Jennings*, at 1010.