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

JOHN E. HARPER,

Petitioner,

No. CIV S-08-1410 FCD DAD P

vs.

D. K. SISTO, WARDEN, et al.,

Respondents.

FINDINGS & RECOMMENDATIONS

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Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's April 27, 2010 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); Hayward v. Marshall, No. 06-55392, 2010 WL 1664977, \*5 (9th Cir. Apr.22, 2010) (en banc).


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           “The standard for a certificate of appealability is lenient.” Hayward, 2010 WL  
2 1664977, at \*4. A petitioner need only “show that reasonable jurists could debate the district  
3 court’s resolution of that the issues are adequate to deserve encouragement to proceed further.”  
4 Id. (internal quotations omitted). See also Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003);  
5 Barefoot v. Estelle, 463 U.S. 880, 893 (1983); Jennings v. Woodford, 290 F.3d 1006, 1010 (9th  
6 Cir. 2002).<sup>1</sup>

7           For the reasons set forth in the magistrate judge’s March 24, 2010 findings and  
8 recommendations, the court finds that petitioner has not made a substantial showing of the denial  
9 of a constitutional right. Accordingly, a certificate of appealability should not issue in this  
10 action.

11           IT IS SO ORDERED.

12 DATED: May 21, 2010.

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15 FRANK C. DAMRELL, JR.  
16 UNITED STATES DISTRICT JUDGE  
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25 <sup>1</sup> 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 v. Woodford, 290 F.3d 1006, 1010 (9th Cir.  
2002) .