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

CHRISTOPHER ANDREW STEWART,

Petitioner,

No. 2:08-cv-1477 LKK KJN P

vs.

M. MARTEL, et al.,

ORDER

Respondents.

\_\_\_\_\_ /

Petitioner, a state prisoner proceeding without counsel, has filed a notice of appeal of this court’s dismissal of his application for a writ of habeas corpus, and thus moves for a certificate of appealability. 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 state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

This court properly dismissed as time-barred the instant petition for writ of habeas corpus. Petitioner failed to establish either extraordinary circumstances or due diligence warranting equitable tolling for the subject eleven-year period. See Magistrate Judge’s Findings

1 and Recommendations, filed February 19, 2010 (Docket No. 18), and Order Adopting Findings  
2 and Recommendations, filed March 16, 2010 (Docket No. 20). Petitioner has therefore not made  
3 a substantial showing of the denial of a constitutional right.

4 Accordingly, a certificate of appealability shall not issue.

5 SO ORDERED.

6 DATED: April 19, 2010.

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LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT