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

RUFUS HARTY KELSAW, IV,

Petitioner,

No. CIV S-08-1612 MCE CHS P

vs.

BOB HOREL,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, filed an 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 September 14, 2010, the magistrate judge’s findings and recommendations were filed and served on both 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’s objections and respondent’s reply to petitioner’s objections are before the court.

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

1 proper analysis. The petition will be denied.

2 If petitioner wishes to appeal the court's decision, a certificate of appealability
3 must issue. 28 U.S.C. § 2253(c)(1); *Hayward v. Marshall*, 603 F.3d 546, 554 (9th Cir. 2010) (en
4 banc). A certificate of appealability may issue where "the applicant has made a substantial
5 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate of
6 appealability must "indicate which specific issue or issues satisfy" the requirement. 28 U.S.C.
7 § 2253(c)(3).

8 A certificate of appealability should be granted for any issue that petitioner can
9 demonstrate is "debatable among jurists of reason," could be resolved differently by a different
10 court, or is "adequate to deserve encouragement to proceed further." *Jennings v. Woodford*,
11 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).¹

12 In this case, petitioner failed to make substantial showing of the denial of a
13 constitutional right. Accordingly, a certificate of appealability shall not issue in this case.

14 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 15 1. The findings and recommendations filed September 14, 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: November 29, 2010

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20 MORRISON C. ENGLAND, JR.
21 UNITED STATES DISTRICT JUDGE
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 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.