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

STEVEN RUCKER,

Petitioner,

No. CIV S-08-1856 FCD CHS P

vs.

D.K. SISTO, Warden,

Respondent.

ORDER

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Petitioner, a state prisoner proceeding pro se, challenged the execution of his sentence in an application for writ of habeas corpus which was denied by this court on February 2, 2010. Petitioner filed a timely notice of appeal and his appeal was processed to the United States Court of Appeals for the Ninth Circuit.

On May 20, 2010, the case was remanded to this court for the limited purpose of granting or denying a certificate of appealability in light of *Hayward v. Marshall*, No. 06-55392, 2010 WL 1664977, at \*5 (9th Cir. Apr. 22, 2010) (en banc) (overruling those portions of earlier cases that relieved a prisoner from obtaining a certificate of appealability to review the denial of a habeas petition challenging an administrative decision to deny parole).

A certificate of appealability may issue under 28 U.S.C. § 2253 “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

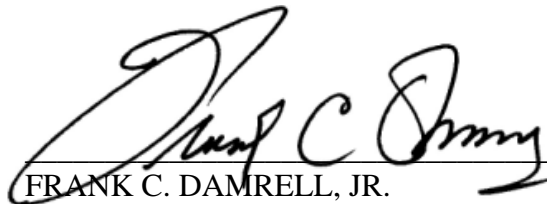
1 The certificate of appealability must “indicate which specific issue or issues satisfy” the  
2 requirement. 28 U.S.C. § 2253(c)(3).

3 A certificate of appealability should be granted for any issue that petitioner can  
4 demonstrate is “debatable among jurists of reason,” “could be resolved differently by a different  
5 court, or is “adequate to deserve encouragement to proceed further.” *Jennings v. Woodford*,  
6 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).<sup>1</sup>

7 Here, there was some evidence to support the decision of the Board of Parole  
8 Hearings that petitioner was not suitable for parole. Petitioner failed to make a substantial  
9 showing of the denial of a constitutional right with respect to the Board’s decision. Accordingly,  
10 a certificate of appealability shall not issue in this case.

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*, at 1010.