

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

GEORGE GOINGS,

Petitioner,

No. CIV S-08-2135 WBS CHS P

vs.

DENNIS K. SISTO, et al.,

Respondents.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, challenged the execution of his sentence in a petition for writ of habeas corpus which was denied by this court in an order filed on January 5, 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 September 13, 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*, 603 F.3d 546, 554 (9th Cir. 2010) (9th Cir. 2010) (en banc) (overruling 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)).¹

7 Here, for the reasons set forth in the magistrate judge’s findings and
8 recommendations filed December 3, 2009, the state court’s determination that the evidence was
9 sufficient to support the Board of Parole Hearings’ conclusion that petitioner was unsuitable for
10 parole was neither contrary to, nor an unreasonable application of, clearly established federal
11 law. Petitioner has failed to make a substantial showing of the denial of a constitutional right
12 with respect to any of the issues presented regarding the state parole authority’s decision to deny
13 parole. A certificate of appealability shall not issue in this case.

14 IT IS SO ORDERED.

15 DATED: September 16, 2010

16 

17 WILLIAM B. SHUBB
18 UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24

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.