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

STEVEN W. ROSE,

No. 2:08-cv-03012-MCE-DAD P

Petitioner,

vs.

ORDER

D.K. SISTO,

Respondent.

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Petitioner, a state prisoner proceeding pro se, has timely filed a motion for a certificate of appealability which the court also construes as a notice of appeal of this court's April 8, 2010 dismissal of his application for a writ of habeas corpus for failure to exhaust state remedies. Before petitioner can appeal this decision, a certificate of appealability must issue. 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 must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).


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1 Where, as here, the petition was dismissed on procedural grounds, a certificate of
2 appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it
3 debatable whether the district court was correct in its procedural ruling’; and (2) ‘that jurists of
4 reason would find it debatable whether the petition states a valid claim of the denial of a
5 constitutional right.’” Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v.
6 McDaniel, 529 U.S. 473, 484 (2000)), rev’d in part on other grounds by 273 F.3d 826 (9th Cir.
7 2001)..

8 After careful review of the entire record herein, this court finds that petitioner has not
9 satisfied the first requirement for issuance of a certificate of appealability in this case.
10 Specifically, there is no showing that jurists of reason would find it debatable whether petitioner
11 has exhausted state remedies. Accordingly, a certificate of appealability should not issue in this
12 action.

13 IT IS SO ORDERED.

14 Dated: June 8, 2010

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18 MORRISON C. ENGLAND, JR.
19 UNITED STATES DISTRICT JUDGE
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