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

JULIOUS RAY WHITEN, JR.,

Petitioner,

No. CIV S-08-3039 GEB DAD P

vs.

D.K. SISTO, Warden

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding with counsel, has filed a motion for a certificate of appealability. (Doc. No. 24.) On October 13, 2010, the magistrate judge assigned to this matter filed findings and recommendations herein which were served on petitioner and which advised petitioner that in any objections he elected to file he may address whether a certificate of appealability should issue in the event he elected to file an appeal from the judgment in this case. (Doc. No. 19.) On October 27, 2010, petitioner filed objections in which he requested a certificate of appealability based on the arguments presented in his amended petition. (Doc. No 20.) On December 13, 2010, the undersigned issued an order adopting the findings and recommendations in full and declining to issue a certificate of appealability. (Doc. No. 21.)

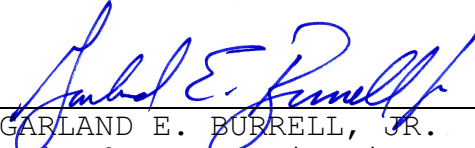
A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the

1 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §
2 2253(c)(2). The court must either issue a certificate of appealability indicating which issues
3 satisfy the required showing, or state the reasons why such a certificate should not issue. Fed.
4 R.App. P. 22(b).

5 The court previously addressed petitioner’s request and concluded that a
6 certificate of appealability would not issue. (Doc. No. 21.) Petitioner has presented no basis for
7 reconsidering this decision. Therefore, a certificate of appealability shall not issue.

8 Accordingly, IT IS HEREBY ORDERED that petitioner’s December 21, 2010
9 motion for a certificate of appealability (Doc. No. 24) is denied.

10 Dated: December 27, 2010

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GARLAND E. BURRELL, JR.
United States District Judge