

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

WILLIE B. COLEMAN, III

Petitioner,

No. 2:09-cv-0020 DAD P

vs.

GARY SWARTHOUT

Respondent.

ORDER

_____/

Petitioner is a state prisoner proceeding through counsel with an application for writ of habeas corpus under 28 U.S.C. § 2254. On May 20, 2013, the court entered judgment against the petitioner, pursuant to its previous orders denying all claims for habeas relief. (See Judgment (Docket No. 40); Orders of December 3, 2012, and May 17, 2013 (Docket Nos. 28 and 39).) Petitioner has now moved for a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(1)(A), on the issue of whether his trial lawyer rendered ineffective assistance of counsel when he told the jury in his opening statement that they would hear from an alibi witness and then did not call that witness to testify.

To qualify for a certificate of appealability under § 2253(c), “a petitioner must show that reasonable jurists could debate whether ... the petition should have been resolved in a

1 different manner[.]” Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (internal quotation marks
2 and citations omitted). The court finds that this petitioner’s claim for ineffective assistance of
3 counsel meets that standard. Therefore the motion will be granted.

4 Accordingly, IT IS HEREBY ORDERED that the motion for a certificate of
5 appealability on the petitioner’s claim that he received ineffective assistance of counsel (Docket
6 No. 41) is granted.

7 DATED: May 22, 2013.

8
9 
10 _____
11 DALE A. DROZD
12 UNITED STATES MAGISTRATE JUDGE

12 hm
13 cole0020.coa