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

DONALD RAY,

No. 2: 09-cv-00644 MCE KJN P

Petitioner,

vs.

ORDER

D.K. SISTO,

Respondent.

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Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's December 13, 2010 denial of his application for a writ of habeas corpus. 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 certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).


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

5 For the reasons set forth in the magistrate judge’s October 25, 2010 findings and  
6 recommendations, petitioner has not made a substantial showing of the denial of a constitutional  
7 right. Accordingly, a certificate of appealability should not issue in this action.

8 IT IS SO ORDERED.

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10 Dated: February 10, 2011

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13 MORRISON C. ENGLAND, JR.  
14 UNITED STATES DISTRICT JUDGE  
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25 <sup>1</sup> Except for the requirement that appealable issues be specifically identified, the standard  
26 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.