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

WILLIE C. HEARNE,

Petitioner,

No. CIV S-09-0725 GEB DAD P

vs.

MATTHEW CATE,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's dismissal of petitioner's petition for a writ of habeas corpus for failure to state a cognizable claim for federal habeas relief. 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).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is "debatable among jurists of reason," could be resolved differently by a different

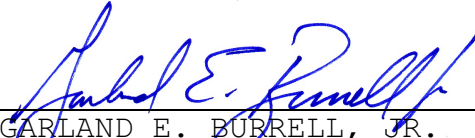
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1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

3 After careful review of the entire record herein, this court finds that petitioner has
4 not shown that “reasonable jurists would find the district court’s assessment of the constitutional
5 claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). Therefore, the court
6 will deny petitioner’s motion for a certificate of appealability. Petitioner may file a motion for a
7 certificate of appealability in the Ninth Circuit Court of Appeals, pursuant to Federal Rule of
8 Appellate Procedure 22(b).

9 Accordingly, IT IS HEREBY ORDERED that petitioner’s April 26, 2010 motion
10 for a certificate of appealability is denied.

11 Dated: June 29, 2010

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GARLAND E. BURRELL, JR.
United States District Judge

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26 ¹ Except for the requirement that appealable issues be specifically identified, the 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.