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

GREGORY DOWNS,

Petitioner,

No. CIV S-09-1104 FCD GGH P

vs.

CALIFORNIA ATTORNEY GENERAL,

Respondent.

ORDER

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Petitioner, a state prisoner proceeding pro se has filed a notice of appeal of this Court's June 23, 2009, dismissal of his application for a writ of habeas corpus. At screening, the Court dismissed the petition as duplicative as petitioner had filed a petition containing virtually identical allegations on the same date in the Fresno Division. That division is more appropriate as petitioner is incarcerated in Kings County, part of the Fresno Division and the action concerned denial of parole. 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).

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           In this case, the Court finds that reasonable jurists would not find the Court’s  
6 determination that the petition was duplicative as debatable or incorrect.

7           Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is  
8 denied in the present action.

9 DATED: September 3, 2009.

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11 FRANK C. DAMRELL, JR.  
12 UNITED STATES DISTRICT JUDGE  
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25           <sup>1</sup> Except for the requirement that appealable issues be specifically identified, the  
26 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.