

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

TONY A. CASTLEMAN,

Petitioner,

No. CIV S-09-CV-1887 FCD CHS P

vs.

STEVE MOORE,

Respondent.

ORDER

\_\_\_\_\_/

Petitioner, Tony A. Castleman, a former state prisoner proceeding pro se, has filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is currently serving an indeterminate sentence of fifteen years to life following his 1986 conviction in San Diego County Superior Court for second degree murder. With his petition, Petitioner does not challenge the constitutionality of that conviction, but rather, the execution of his sentence and, specifically, the January 18, 2008 decision by the Board of Parole Hearings finding him unsuitable for parole.

The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On October 13, 2010, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days.

1 Petitioner has filed objections to the findings and recommendations.

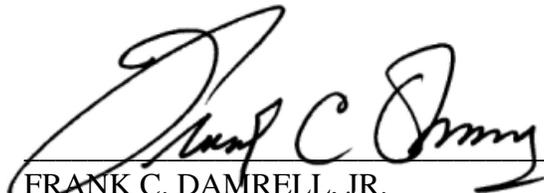
2 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304,  
3 this court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,  
4 the court finds the findings and recommendations to be supported by the record and by the  
5 magistrate judge's analysis.

6 If Petitioner wishes to appeal this decision, a certificate of appealability must issue.  
7 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of appealability may issue under 28 U.S.C.  
8 § 2253 "if the applicant has made a substantial showing of the denial of a constitutional right." 28  
9 U.S.C. § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues  
10 satisfy" the requirement. 28 U.S.C. 2253(c)(3). A certificate of appealability should be granted for  
11 any issue that Petitioner can demonstrate is "debateable among jurists of reason," could be resolved  
12 differently by a different court, or is "adequate to deserve encouragement to proceed further."  
13 *Jennings v. Woodford*, 2990 F.3d 1006, 1010 (9th Cir. 2002) (quoting *Barefoot v. Estelle*, 463 U.S.  
14 880, 893 (1983)).<sup>1</sup> In this case, Petitioner has failed to make a substantial showing with respect to  
15 any of the claims presented.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The findings and recommendations filed October 13, 2010 are adopted in full.  
18 2. The petition for writ of habeas corpus is DENIED.  
19 3. A certificate of appealability shall not issue in the present action

20 DATED: January 12, 2011.

21  
22   
23 FRANK C. DAMRELL, JR.  
24 UNITED STATES DISTRICT JUDGE

25 <sup>1</sup> Except for the requirement that appealable issues be specifically identified, the standard  
26 for a certificate of appealability is the same as the standard applied to issuance of a certificate of  
probable cause. *Jennings*, 290 F.3d at 1010.