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

KEVIN L. FUQUA,

Petitioner,

No. 2:09-cv-2055 MCE KJN P

vs.

CLAUDE E. FINN, et al.,

Respondent.

ORDER

\_\_\_\_\_ /

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. 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 September 27, 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. Petitioner has filed objections to the findings and recommendations.

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

1 Before petitioner can appeal this decision, a certificate of appealability must issue.  
2 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

3 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the  
4 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.  
5 § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues  
6 satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

7 A certificate of appealability should be granted for any issue that petitioner can  
8 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different  
9 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,  
10 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).<sup>1</sup>

11 Petitioner has made a substantial showing of the denial of a constitutional right in  
12 the following issue presented in the instant petition: whether there was sufficient evidence to  
13 support the 2006 decision by the California Board of Parole Hearings finding him unsuitable for  
14 parole.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. The findings and recommendations filed September 27, 2010, are adopted in  
17 full;  
18 2. Petitioner's application for a writ of habeas corpus is denied;  
19 3. A certificate of appealability is issued in this action.

20 Dated: November 12, 2010

21   
22 MORRISON C. ENGLAND, JR.  
23 UNITED STATES DISTRICT JUDGE

24  
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.