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

JOHN FITZGERALD MCGEE,

No. 2:09-cv-03184-MCE-GGH-P

Petitioner,

v.

ORDER

JOHN MARSHALL, et al.,

Respondent.

_____ /

Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus concerning his 2003 conviction for forcible oral copulation, sexual penetration with force, spousal abuse, and spousal rape. On August 26, 2010, the district court adopted this court’s findings and recommendations denying the petition and dismissing the action with prejudice due to petitioner’s failure to comply with the one-year statutory limitation period under 28 U.S.C. § 2244(d). Pending is petitioner’s September 14, 2010 motion for a certificate of appealability.


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)).¹

5 Upon review and consideration, the undersigned concludes that petitioner has not made a
6 substantial showing of the denial of a constitutional right.

7 Accordingly, IT IS HEREBY ORDERED that petitioner’s motion for a certificate of
8 appealability is denied.

9 Dated: October 13, 2010

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11 MORRISON C. ENGLAND, JR.
12 UNITED STATES DISTRICT JUDGE
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25 ¹ 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.