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

ANTHONY R. TURNER,
Petitioner,

No. CIV S-10-0636 GGH P

vs.

ED PRIETO,
Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has filed a notice of appeal of this court's June 18, 2010, dismissal of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). This action is before the undersigned pursuant to petitioner's consent. Doc. 3.

The court dismissed petitioner's action without prejudice as it was duplicative of another pending action and challenged both his underlying conviction and the conditions of confinement.

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

1 demonstrate is ““debatable among jurists of reason,”” could be resolved differently by a different
2 court, or is ““adequate to deserve encouragement to proceed further.”” Jennings v. Woodford,
3 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

4 Petitioner has not made a substantial showing of the denial of a constitutional
5 right and this action was only dismissed without prejudice. For all these reasons petitioner’s
6 motions are denied.

7 Accordingly, IT IS HEREBY ORDERED that petitioner’s motions for a
8 certificate of appealability (Docs. 15, 17) are denied.

9 DATED: September 15, 2010

/s/ Gregory G. Hollows

10 _____
UNITED STATES MAGISTRATE JUDGE

11 GGH: AB
12 turn0636.coa

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25 _____
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.