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

ANDRE RHODES,

Petitioner,

No. CIV S-10-1444 GGH P

vs.

MIKE McDONALD, Warden,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's May 24, 2011 dismissal of his application for a writ of habeas corpus for failure to exhaust state remedies. 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 court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

For the reasons set forth in this court’s order of May 24, 2011, petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly, a certificate of

1 appealability should not issue in this action.

2 IT IS SO ORDERED.

3 DATED: July 13, 2011

4 /s/ Gregory G. Hollows
5 UNITED STATES MAGISTRATE JUDGE

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