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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 WENDELL STUART,
12 Petitioner,

No. 2:10-cv-2098 MCE KJN P

13 vs.

ORDER

14 SINGH,
15 Respondent.

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17 Petitioner, a state prisoner proceeding without counsel, has filed a notice of appeal
18 of this court's dismissal of petitioner's application for a writ of habeas corpus, and thus moves
19 for a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

20 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the
21 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §
22 2253(c)(2). The court must either issue a certificate of appealability indicating which issues
23 satisfy the required showing, or state the reasons why such a certificate should not issue. Fed. R.
24 App. P. 22(b).


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1 This court properly dismissed as time-barred the instant petition for writ of habeas
2 corpus; petitioner failed to assert any basis to warrant equitable tolling of the limitations period.
3 Moreover, the court found, alternatively, a lack of support for petitioner's "actual innocence" and
4 due process claims. See Magistrate Judge's Findings and Recommendations, filed July 14, 2011
5 (Docket No. 15), and Order Adopting Findings and Recommendations, filed September 12, 2011
6 (Docket No. 20). Therefore, petitioner has not made a substantial showing of the denial of a
7 constitutional right. 28 U.S.C. § 2253(c)(2).

8 Accordingly, IT IS HEREBY ORDERED that petitioner's request for a certificate
9 of appealability (Dkt. No. 22), is DENIED.

10 Dated: November 15, 2011

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13 MORRISON C. ENGLAND, JR.
14 UNITED STATES DISTRICT JUDGE
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