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

GERALD J. PAYNE,

Petitioner,

No. CIV S-10-3016 GEB GGH P

vs.

TIMOTHY VIRGA,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se has timely filed a notice of appeal of this court's March 14, 2011, dismissal at screening 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).

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).

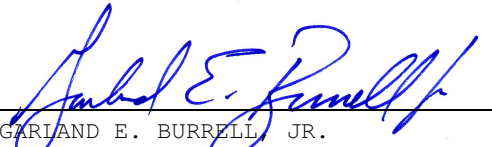
A certificate of appealability should be granted for any issue that petitioner can demonstrate is “debatable among jurists of reason,” could be resolved differently by a different court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,

1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

2 Petitioner has failed to make a substantial showing of the denial of a constitutional
3 right in the this case.

4 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is not
5 issued in the present action.

6 Dated: April 6, 2011

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9 GARLAND E. BURRELL, JR.
United States District Judge

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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.