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

WILLIAM LEE WALKER,
Petitioner,
v.
B. CURRY, Warden,
Respondent.

No. C 07-0147 WHA (PR)
**ORDER DENYING
CERTIFICATE OF
APPEALABILITY**

This is a habeas corpus case filed by a state prisoner pursuant to 28 U.S.C. 2254. The Petition is directed to a parole denial. The petition was denied on its merits in an order dated October 14, 2008. Judgment was entered that day.

On November 13, 2008, petitioner filed a notice of appeal, requesting a certificate of appealability ("COA"). See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). The Clerk processed the appeal without a ruling on the request for a COA because at that time, a prisoner did not have to obtain a certificate of appealability in order to appeal the denial of a habeas petition challenging the denial of parole. See *White v. Lambert*, 370 F.3d 1002, 1004 (9th Cir. 2004); *Rosas v. Nielsen*, 428 F.3d 1229, 1231-32 (9th Cir. 2005) (per curiam). On April 22, 2010, the Ninth Circuit overruled *White* and *Rosas* on that point, and held that a prisoner must obtain a COA. See *Hayward v. Marshall*, 603 F.3d 546, 554 (9th Cir. 2010) (en banc). On September 24, 2010, pursuant to *Hayward*, the Ninth Circuit remanded the case for the limited purpose of a decision on whether to grant or deny a COA.

United States District Court
For the Northern District of California

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A judge shall grant a certificate of appealability "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 must indicate which issues satisfy this standard. *See id.* § 2253(c)(3). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 120 S.Ct. 1595, 1604 (2000). For the reasons set out in the ruling on the petition, jurists of reason would not find debatable or wrong that the denial of parole violated neither his right to due process nor his right to equal protection. Petitioner's request for a certificate of appealability is **DENIED**.

The clerk shall transmit the file, including a copy of this order, to the Ninth Circuit. *See* Fed. R. App. P. 22(b); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997). Petitioner may then ask the Ninth Circuit to issue the certificate, *see* R.App.P. 22(b)(1), or if he does not, the notice of appeal will be construed as such a request, *see* R.App.P. 22(b)(2).

The Clerk shall close the file.

IT IS SO ORDERED.

Dated: November 10, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE