

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
For the Northern District of California

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

DEAN A. CHRISTIAN,)	No. C 07-1082 MMC (PR)
Petitioner,)	<u>Ninth Circuit Case No. 10-15410</u>
v.)	ORDER DENYING CERTIFICATE
BEN CURRY, Warden,)	OF APPEALABILITY; DIRECTIONS
Respondent.)	TO CLERK
_____)	

On February 22, 2007, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging a Board of Prison Terms’ (“Board”) decision finding him unsuitable for parole. The Court, by order filed December 28, 2009, denied the petition on the merits. Judgment was entered that same date.

On January 28, 2010, petitioner filed a notice of appeal. At that time, Ninth Circuit case law held that a certificate of appealability (“COA”) was not required for a prisoner to obtain review of a denial of a habeas petition challenging the Board’s denial of parole. See Rosas v. Nielsen, 428 F.3d 1229, 1231-32 (9th Cir. 2005) (per curiam); White v. Lambert,

1 370 F.3d 1002, 1004 (9th Cir. 2004). Consequently, the Clerk processed the appeal herein
2 without a ruling on whether a COA should issue. On April 22, 2010, the Ninth Circuit
3 overruled those portions of Rosas and White that relieved a prisoner of the obligation to
4 obtain a COA as a precondition for review of the denial of a habeas petition challenging an
5 administrative decision denying parole. See Hayward v. Marshall, 603 F.3d 546, 554 (9th
6 Cir. 2010) (en banc); see also 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). On June 17, 2010,
7 the Ninth Circuit, pursuant to the Hayward decision, remanded the instant action to this
8 Court, for the limited purpose of deciding whether a COA should be granted. The Court next
9 addresses that issue.

10 A judge shall grant a COA “only if the applicant has made a substantial showing of
11 the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate must identify
12 the particular issues that satisfy such standard. See id. § 2253(c)(3); United States v. Asrar,
13 116 F.3d 1268, 1270 (9th Cir. 1997). If the request to issue a certificate is declined, the court
14 must state the reasons why the certificate should not be granted. Id. “Where a district court
15 has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c)
16 is straightforward: the petitioner must demonstrate that reasonable jurists would find the
17 district court’s assessment of the constitutional claims debatable or wrong.” Slack v.
18 McDaniel, 529 U.S. 473, 484 (2000).

19 In denying the instant petition, the Court found the state court’s decision rejecting
20 petitioner’s claims, specifically, his claims that (1) the evidence was insufficient to deny
21 parole, and (2) the denial of parole violated due process because it was inconsistent with the
22 California Department of Corrections and Rehabilitation’s decision to house petitioner in a
23 facility for non-violent offenders, was neither contrary to nor an unreasonable application of
24 clearly established Supreme Court precedent, nor was such decision based on an
25 unreasonable determination of the facts. (Order, filed Dec. 28, 2009, at 5:20-9:7.) For the
26 same reasons stated by the Court in so ruling, the Court concludes the instant action is not a
27 case in which reasonable jurists would find the Court’s assessment of the constitutional
28 claims debatable or wrong.


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Accordingly, a COA is hereby DENIED.

The Clerk shall forward a copy of this order to the Ninth Circuit Court of Appeals,
and shall close the file.

IT IS SO ORDERED.

DATED: June 28, 2010


MAXINE M. CHESNEY
United States District Judge