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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANDREW CLAYTON,

No. C 08-1542 MHP

Petitioner,

MEMORANDUM & ORDER

v.

Re: Certificate of AppealabilityDERRAL G. ADAMS, Warden,
Corcoran State Prison,Respondent.

On July 2, 2010, the court denied petitioner Andrew Clayton's petition for a writ of habeas corpus under 28 U.S.C. section 2254. Docket No. 10 (Order). Petitioner has applied for a certificate of appealability ("COA") under 28 U.S.C. section 2253. Docket No. 13 (Application).

28 U.S.C. section 2253 requires a petitioner to obtain a COA from the district court prior to filing an appeal. A COA may issue when "the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The "substantial showing" may be satisfied when the petitioner demonstrates "that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

In its denial of petitioner's petition, the court found that petitioner could not demonstrate that the hearsay statement he sought to introduce bore persuasive assurances of trustworthiness. In his application for a COA, petitioner argues that the excluded hearsay statement is substantially consistent with the prosecution's theory of the case. That is not the standard by which admissibility

1 is determined. Due to the lack of persuasive assurance, as required by *Chambers v. Mississippi*, 410
2 U.S. 284, 302 (1973), the state court's exclusion of the hearsay statement was not contrary to or an
3 unreasonable application of clearly established Federal law, nor was it based on an unreasonable
4 determination of the facts in light of the evidence presented in the state court proceedings.
5 Consequently, reasonable jurists would not find the court's assessment debatable or wrong.

6 Petitioner's request for a COA is DENIED. The Clerk shall forward the case file to the
7 United States Court of Appeals for the Ninth Circuit. *United States v. Asrar*, 116 F.3d 1268, 1270
8 (9th Cir. 1997).

9
10 CONCLUSION

11 For the foregoing reasons, petitioner's request for a certificate of appealability is DENIED.

12 IT IS SO ORDERED.

13
14 Dated: August 3, 2010



MARILYN HALL PATEL
United States District Court Judge
Northern District of California