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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
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8 RYAN CARTER,

No. C 08-3593 MHP (pr)

9 Petitioner,

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

10 v.

11 D. K. SISTO, warden,

12 Respondent.
13 _____/

14 Petitioner has filed an application for issuance of certificate of appealability following
15 the dismissal of his habeas petition as untimely. See 28 U.S.C. § 2253(c); Fed. R. App. P.
16 22(b). The court construes the application also to be a notice of appeal. See Tinsley v. Borg,
17 895 F.2d 520, 523 (9th Cir. 1990) (treating timely pro se motion for a certificate of probable
18 cause as a timely notice of appeal). The application for a certificate of appealability is
19 DENIED because petitioner has not demonstrated that "jurists of reason would find it
20 debatable whether the petition states a valid claim of the denial of a constitutional right and
21 that jurists of reason would find it debatable whether the district court was correct in its
22 procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

23 The clerk shall forward to the court of appeals the case file with this order. See
24 United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997).

25 IT IS SO ORDERED.

26 DATED: March 30, 2010



Marilyn Hall Patel
United States District Judge