

1 IN THE UNITED STATES DISTRICT COURT  
2  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

4  
5 ERIC LA VON THRASHER,  
6  
7 Petitioner,

No. C 05-01840 SBA (PR)

**ORDER DENYING REQUEST FOR  
CERTIFICATE OF APPEALABILITY**

v.

8 ROBERT AYERS, Warden,  
9  
10 Respondent.

11 This is a habeas corpus case filed by a state prisoner pursuant to 28 U.S.C. 2254 in which he  
12 challenges the denial of parole. In an Order dated December 10, 2007, the petition was denied on its  
13 merits. Judgment was entered that day.

14 On January 11, 2008, Petitioner filed a notice of appeal, requesting a certificate of  
15 appealability (COA). See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). In an Order dated January 15,  
16 2008, the Court denied the request for a COA as unnecessary because at that time, a prisoner did not  
17 have to obtain a COA in order to appeal the denial of a habeas petition challenging the denial of  
18 parole. See White v. Lambert, 370 F.3d 1002, 1004 (9th Cir. 2004); Rosas v. Nielsen, 428 F.3d  
19 1229, 1231-32 (9th Cir. 2005) (per curiam). On April 22, 2010, the Ninth Circuit Court of Appeals  
20 overruled White and Rosas on that point, and held that a prisoner must obtain a COA. See Hayward  
21 v. Marshall, No. 06-55392, 2010 WL 1664977, at \*5 (9th Cir. Apr. 22, 2010) (en banc).

22 On June 22, 2010, pursuant to Hayward, the Ninth Circuit remanded the present case for the  
23 limited purpose of a decision on whether to grant or deny a COA. Therefore, the case was reopened  
24 for this limited purpose.

25 A judge shall grant a COA "only if the applicant has made a substantial showing of the  
26 denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate must indicate which issues  
27 satisfy this standard. See id. § 2253(c)(3). "Where a district court has rejected the constitutional  
28 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

1 claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). For the reasons set out  
2 in the ruling on the petition, jurists of reason would not find the result debatable or wrong.  
3 Accordingly, Petitioner's request for a COA is DENIED.

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

8 The Clerk shall terminate all pending motions and close the file.

9 IT IS SO ORDERED.

10 DATED: 7/1/10

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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28 UNITED STATES DISTRICT COURT

1 FOR THE  
2 NORTHERN DISTRICT OF CALIFORNIA

3 THRASHER,

4 Plaintiff,

5 v.

6 BROWN et al,

7 Defendant.

Case Number: CV05-01840 SBA

**CERTIFICATE OF SERVICE**

8  
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on July 2, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Eric La Von Thrasher B-37948  
16 San Quentin State Prison  
17 San Quentin, CA 94964

18 Dated: July 2, 2010

Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk

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