

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

LESLIE PLITZ,

Petitioner,

v.

CALIFORNIA PAROLE BOARD
COMMISSIONER,

Respondent.

No. C 07-02175 SBA (PR)

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

United States District Court
For the Northern District of California

Petitioner Leslie Plitz, an inmate at the Correctional Training Facility in Soledad, California, filed this pro se petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, in which he challenges the denial of parole by the California Board of Parole Hearings. The petition was denied on its merits in an order dated March 10, 2010. Judgment was entered that day.

On March 22, 2010, petitioner filed a notice of appeal. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). The Clerk processed the appeal without a ruling on whether a certificate of appealability (“COA”) should issue because at that time a prisoner did not have to obtain a COA 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 now a COA is necessary for an appeal in such cases. Hayward v. Marshall, No. 06- 55392, 2010 WL 1664977, at *5 (9th Cir. Apr. 22, 2010) (en banc). On May 12, 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.

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. 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

1 petitioner must demonstrate that reasonable jurists would find the district court's assessment of the
2 constitutional claims debatable or wrong." Slack v. McDaniel, 120 S.Ct. 1595, 1604 (2000). For
3 the same reasons set out in the ruling on the petition, the state court decisions upholding the denial
4 of parole were neither "an 'unreasonable application of the California 'some evidence'
5 requirement," nor were they "based on an unreasonable determination of the facts in light of the
6 evidence." Hayward, 2010 WL 1664977 at *11 (quoting 28 U.S.C. 2254(d)) (footnote omitted).
7 Jurists of reason would not find the Court's resolution of the constitutional claims in this case
8 debatable or wrong. Petitioner's request for a certificate of appealability is **DENIED**.

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

13 IT IS SO ORDERED.

14 DATED: 6-1-10

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16 SAUNDRA BROWN ARMSTRONG
17 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 LESLIE PILTZ,

5 Plaintiff,

6 v.

7 CALIFORNIA PAROLE BOARD
8 COMMISSIONER et al,

9 Defendant.

Case Number: CV07-02175 SBA

CERTIFICATE OF SERVICE

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

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

16 Leslie Piltz D58060
17 Correctional Training Facility
18 P.O. Box 689
19 Soledad, CA 93960-0689

20 Dated: June 2, 2010

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