

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

4
5 EMIL JOSEPH WILHELM EKDAHL, III,

No. C 07-03642 SBA (PR)

6 Petitioner,

**ORDER DENYING REQUEST FOR
CERTIFICATE OF APPEALABILITY**

7 v.

8 ROBERT AYERS, Warden,

9 Respondent.

10 This is a habeas corpus case filed by a state prisoner pursuant to 28 U.S.C. 2254 in which he
11 challenges the denial of parole. In an Order dated December 12, 2008, the petition was denied on its
12 merits. Judgment was entered that day.

13 On December 22, 2008, Petitioner filed a notice of appeal, requesting a certificate of
14 appealability (COA). See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). In an Order dated January 12,
15 2009, the Court denied the request for a COA as unnecessary because at that time, a prisoner did not
16 have to obtain a COA in order to appeal the denial of a habeas petition challenging the denial of
17 parole. See White v. Lambert, 370 F.3d 1002, 1004 (9th Cir. 2004); Rosas v. Nielsen, 428 F.3d
18 1229, 1231-32 (9th Cir. 2005) (per curiam). On April 22, 2010, the Ninth Circuit Court of Appeals
19 overruled White and Rosas on that point, and held that a prisoner must obtain a COA. See Hayward
20 v. Marshall, No. 06-55392, 2010 WL 1664977, at *5 (9th Cir. Apr. 22, 2010) (en banc).

21 On May 18, 2010, pursuant to Hayward, the Ninth Circuit remanded the present case for the
22 limited purpose of a decision on whether to grant or deny a COA. Therefore, the case was reopened
23 for this limited purpose.

24 A judge shall grant a COA "only if the applicant has made a substantial showing of the
25 denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate must indicate which issues
26 satisfy this standard. See id. § 2253(c)(3). "Where a district court has rejected the constitutional
27 claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must
28 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: 5/24/10


SAUNDRA BROWN ARMSTRONG
United States District Judge

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

4 EMIL JOSEPH WILHELM EKDAHL III,

5 Plaintiff,

6 v.

7 AYERS et al,

8 Defendant.

Case Number: CV07-03642 SBA

CERTIFICATE OF SERVICE

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 May 24, 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 Emil J.W. Ekdahl C-79199
16 San Quentin State Prison
17 1 Main Street
18 San Quentin, CA 94974

19 Dated: May 24, 2010

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