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E-FILED - 10/5/10

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

DAVID PATTERSON)	No. C 06-1429 RMW (PR)
)	
Petitioner,)	ORDER GRANTING
)	CERTIFICATE OF
vs.)	APPEALABILITY
)	
BEN CURRY, Warden)	
)	
Respondent.)	
_____)	

This case has been remanded to the district court for the limited purpose of granting or denying a certificate of appealability. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b); United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997). Petitioner filed a notice of appeal from the district court’s denial of his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the California Board of Prison Terms (“Board”) decision denying him parole. Therefore, the district court is required to grant or deny a certificate of appealability in the first instance. See Hayward v. Marshall, 603 F.3d 546 (9th Cir. 2010) (en banc).

The Court finds that jurists of reason would find it debatable whether petitioner’s right to due process was violated by the Board’s decision denying him parole based upon his claim that there is no evidence to support the Board’s finding that he is unsuitable for parole. Therefore, the request for a certificate of appealability is GRANTED.

The Clerk shall transmit the file, including a copy of this order, to the Court of Appeals and

1 close the file.

2 IT IS SO ORDERED.

3 DATED: 10/4/10

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RONALD M. WHYTE
United States District Judge