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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

THOMAS GENE MAYFIELD, JR.,

Petitioner,

vs.

L. E. SCRIBNER, et al.,

Respondents.

CASE NO. 07-CV-340 JLS (WMc)

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

Thomas Gene Mayfield, Jr. filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On December 3, 2008, pursuant to 28 U.S.C. § 636(b)(1), Magistrate Judge William McCurine, Jr. issued a Report and Recommendation (“R&R”) that the Court deny the petition. (Doc. No. 25.) The Court received Petitioner’s objections to the R&R on December 29, 2008. (Doc. No. 26.) After considering the R&R and Petitioner’s objections, the Court adopted Magistrate Judge McCurine’s recommendation over the objections and dismissed Petitioner’s petition. (Doc. No. 27.) On January 28, 2009, Petitioner filed a notice of appeal. (Doc. No. 29.)

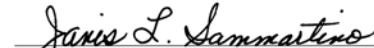
This Court must “construe [Petitioner’s] notice of appeal as a request for certificate of appealability.” Turner v. Calderon, 281 F.3d 851, 864–65 (9th Cir. 2002) (quoting Sassounian v. Roe, 230 F.3d 1097, 1100 (9th Cir. 2000)). A certificate of appealability is authorized “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2) (2008). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented

1 are adequate to deserve encouragement to proceed further.” Miller-El v. Cockrell, 537 U.S. 322, 327
2 (2003); see also Slack v. McDaniel, 529 U.S. 473, 484 (2000). The Court must either (1) grant the
3 certificate of appealability indicating which issues satisfy the required showing or (2) state why a
4 certificate should not issue. Fed. R. App. P. 22(b).

5 In this case, the certificate should not issue because reasonable jurists would agree that some
6 evidence supports the board’s and state courts’ denial of Petitioner’s claims. Accordingly, the Court
7 **DENIES** Petitioner's requests for a certificate of appealability.

8 IT IS SO ORDERED.

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10 DATED: February 3, 2009



Honorable Janis L. Sammartino
United States District Judge

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