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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ABNER HAYNES LISTER,

Petitioner,

v.

MATTHEW CATE, Secretary, et al.,

Respondents.¹

CASE NO. 07cv822 BEN (JMA)
**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

Concurrently herewith, the Court entered judgment denying the Petitioner's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. Effective December 1, 2009, this Court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Rule 11 foll. 28 U.S.C. § 2254; 28 U.S.C. § 2253; Fed.R.App.P. 22(b). For the reasons set forth below, the Court **DENIES** certificate of appealability as to all claims asserted by Petitioner in his Petition for Writ of Habeas Corpus.

A certificate of appealability ("COA") is authorized "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.A. § 2253(c)(2). The applicant must meet the "substantial showing" standard with respect to each issue he or she seeks to raise on appeal. *Lambricht v. Stewart*, 220 F.3d 1022, 1024 (9th Cir. 2000). Where, as here, a habeas claim has been denied on its merits, a petitioner may meet the threshold of "substantial showing of the denial of a

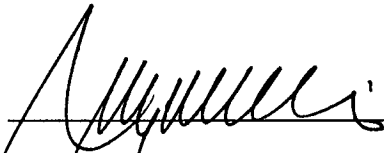
¹ The Court substituted Matthew Cate, Secretary of the California Department of Corrections and Rehabilitation, as Respondent on May 29, 2008. See 28 U.S.C. § 2242; Rule 2(a) U.S.C. foll. § 2254; *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996); see also Fed. R. Civ. P. 25(d).

1 constitutional right” by demonstrating that: (1) the issues are debatable among jurists of reason; (2)
2 that a court could resolve the issues in a different manner; or (3) that the questions are adequate to
3 deserve encouragement to proceed further. *Lambright*, 220 F.3d at 1024-25 (9th Cir. 2000), citing
4 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), and *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983).
5 The purpose of this standard is “to promote Congress’ intent to ‘to prevent frivolous appeals from
6 delaying the States’ ability to impose sentences...’ while at the same time protecting the right of
7 petitioners to be heard.” *Lambright*, 220 F.3d at 1025 (citing *Barefoot*, 463 U.S. at 892).

8 In this case, the Court finds that reasonable jurists would not find it debatable that Petitioner
9 was denied a constitutional right, nor could a court resolve the issues in a different manner. *Slack*, 529
10 U.S. at 484; *Lambright*, 220 F.3d at 1026. The questions are also not adequate to deserve
11 encouragement to proceed further. *Id.* Accordingly, the Court **DENIES** a certificate of appealability
12 as to all of Petitioner’s claims.

13 **IT IS SO ORDERED.**

14 Date: March 18, 2010


Hon. Roger T. Benitez
Judge, United States District Court

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