

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

RAUL ALVAREZ HERNANDEZ,

Petitioner,

No. CIV S-00-0460 FCD GGH P

vs.

WILLIAM DUNCAN,

Respondent.

ORDER

\_\_\_\_\_/

Petitioner, a state prisoner proceeding through counsel, has timely filed a notice of appeal of this court's August 18, 2008 denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “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 of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is “debatable among jurists of reason,” could be resolved differently by a different

////

1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,  
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).<sup>1</sup>

3 Petitioner has made a substantial showing of the denial of a constitutional right in  
4 the following issues presented in the instant petition: (1) whether the evidence was sufficient to  
5 support the jury determination that petitioner’s prior second degree burglary conviction  
6 constituted a “strike” within the meaning of California’s “Three Strikes Law;” and (2) whether  
7 petitioner’s trial and appellate counsel rendered ineffective assistance.

8 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is  
9 issued in the present action.

10 DATED: April 16, 2009.

11   
12 FRANK C. DAMRELL, JR.  
13 UNITED STATES DISTRICT JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

---

25 <sup>1</sup> Except for the requirement that appealable issues be specifically identified, the  
26 standard for issuance of a certificate of appealability is the same as the standard that applied to  
issuance of a certificate of probable cause. Jennings, at 1010.