

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

THOMAS JOHN SMITHSON,

Petitioner,

2:01-cv-1373-GEB-DAD-P

vs.

DERRAL ADAMS, Warden, et al.,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's January 14, 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

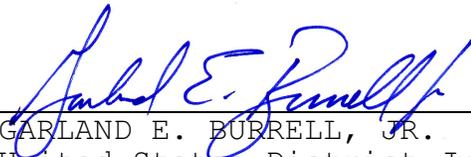
////

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)).¹

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 petitioner was denied due
5 process of law when the trial court allowed the prosecution to introduce evidence that he had
6 suffered a prior conviction for burglary; (2) whether petitioner was denied the effective assistance
7 of trial counsel; and (3) whether petitioner was denied due process of law because the evidence
8 introduced at his trial was insufficient to support the attempted robbery and felony murder
9 convictions and the robbery special circumstance finding.

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

12
13 Dated: February 5, 2008

14
15 
16 GARLAND E. BURRELL, JR.
United States District Judge

17
18
19
20
21
22
23
24
25 _____
26 ¹ Except for the requirement that appealable issues be specifically identified, the 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.