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

BRADFORD G. BURBINE,

Petitioner,

No. CIV S-04-1691 LKK EFB P

vs.

A. K. SCRIBNER, WARDEN,

ORDER

Respondent.

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Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's September 4, 2009 denial of his application for a writ of habeas corpus. Petitioner has also filed a request for a certificate of appealability. See 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

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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 he was denied due process and
5 the right to confront the witnesses against him when the trial court admitted the hearsay
6 testimony of the mother of one of the victims; and (2) whether he was denied the right to
7 effective assistance of counsel.

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

10 DATED: December 23, 2009.

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13 LAWRENCE K. KARLTON
14 SENIOR JUDGE
15 UNITED STATES DISTRICT COURT
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 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.