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

10 THOMAS LEROY HENNAGAN JR.,

11 Petitioner,

No. CIV S-04-1900 JAM DAD P

12 vs.

13 K. PROSPER, Warden,

14 Respondent.

ORDER

15 _____/
16 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of
17 this court's January 8, 2009 denial of his application for a writ of habeas corpus. Before
18 petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c);
19 Fed. R. App. P. 22(b).

20 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
21 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
22 § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues
23 satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

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

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

Petitioner has made a substantial showing of the denial of a constitutional right in the following issues presented in the instant petition: (1) whether his trial and appellate counsel rendered ineffective assistance; and (2) whether the trial court committed prejudicial error by denying his motion for new trial and admitting into evidence his prior conviction for vehicle theft.

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

DATED: 2/13/2009

/s/ John A. Mendez
UNITED STATES DISTRICT JUDGE

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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.