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

DANIEL SHAWN NEWSOM,

Petitioner,

2:04-cv-2134-GEB-DAD-P

vs.

D. L. RUNNELS, Warden, et al.,

Respondents.

ORDER

_____/

Petitioner, a state prisoner proceeding through counsel, has timely filed a notice of appeal of this court's November 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)).¹

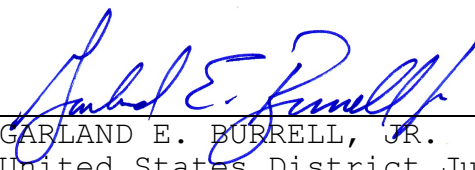
3 Petitioner has made a substantial showing of the denial of a constitutional right in
4 the following issues presented in the instant petition: whether the trial court erroneously and
5 prejudicially interfered with the function of the jury in violation of his right to trial by an
6 unbiased, impartial jury.

7 On December 24, 2008, proceeding in pro per, petitioner filed a request to
8 proceed in forma pauperis on appeal. However, the notice of appeal filed by petitioner’s counsel
9 states that the filing fee for the appeal will be paid. Accordingly, the request to proceed in forma
10 pauperis on appeal filed by petitioner will be denied.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. A certificate of appealability is issued in the present action; and
13 2. Petitioner’s December 24, 2008 request to proceed in forma pauperis on appeal
14 is denied.

15 Dated: January 15, 2009

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GARLAND E. BURRELL, JR.
18 United States District Judge
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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.