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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 STEVEN LEE VARNUM,

12 Petitioner,

2:04-cv-2659-GEB-CHS-P

13 vs.

14 RICHARD KIRKLAND, et al.,

15 Respondents.

ORDER

16 _____/
17 Petitioner, a state prisoner proceeding pro se, has filed a timely notice of appeal of
18 this court's January 21, 2009 order denying his application for writ of habeas corpus. Before
19 petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c);
20 Fed. R. App. P. 22(b).

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

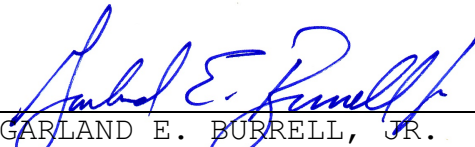
25 A certificate of appealability should be granted for any issue that petitioner can
26 demonstrate is "debatable among jurists of reason," could be resolved differently by a different

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 in his petition that his confession was
4 unconstitutionally admitted into evidence at his trial.

5 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability shall
6 issue in the present action.

7 Dated: February 17, 2009

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10 GARLAND E. BURRELL, JR.
11 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.