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

JAMES KERNS,

Petitioner,

2:05-cv-746-GEB-KJM-P

vs.

D. ADAMS,

Respondents.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's April 23, 2009 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).

In addition, petitioner has filed a request for injunctive relief, asking the court to direct prison officials to provide petitioner with his legal property so he can file a request for a certificate of appealability. However, this court deems petitioner's notice of appeal to encompass a request that it issue such a certificate.

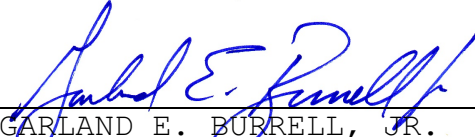
A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.

1 § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues
2 satisfy the required showing or must state the reasons why such a certificate should not issue.
3 Fed. R. App. P. 22(b).

4 For the reasons set forth in the magistrate judge's January 26, 2009 findings and
5 recommendations, petitioner has not made a substantial showing of the denial of a constitutional
6 right. Accordingly, a certificate of appealability should not issue in this action.

7 Moreover, because the court deems the notice of appeal to include a request for
8 the issuance of a certificate of appealability, petitioner's motion for injunctive relief (docket no.
9 49) is denied.

10 Dated: July 27, 2009

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GARLAND E. BURRELL, JR.
United States District Judge