

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

TIO DINERO SESSOMS,

Petitioner, No. CIV S-05-1221 JAM GGH F

VS.

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

**Respondent.** ORDER

Petitioner is a state prisoner proceeding with appointed counsel. Petitioner has been granted, subsequent to this court's denial of a request for certificate of appealability on grounds of untimeliness, an extension of time and has been deemed to have filed a notice of appeal of timely. See Docket Entry # 56, # 59 and # 60. This matter has been referred to this court for reconsideration of petitioner's application as a timely filed notice of appeal to the October 24, 2008, denial of his petition for writ of habeas corpus, and on that basis, the court will reconsider the request for a certificate of appealability. 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

1 satisfy" the requirement. 28 U.S.C. § 2253(c)(3).

2 A certificate of appealability should be granted for any issue that petitioner can  
3 demonstrate is "debatable among jurists of reason," could be resolved differently by a different  
4 court, or is "adequate to deserve encouragement to proceed further." Jennings v. Woodford,  
5 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).<sup>1</sup>

6 Petitioner has made a substantial showing of the denial of a constitutional right in  
7 the following issues presented in the instant petition: 1) whether petitioner received ineffective  
8 assistance of counsel by a failure of his trial counsel to investigate and present evidence that his  
9 constitutional rights were violated in a police interview; 2) whether petitioner's Miranda<sup>2</sup> rights  
10 were violated when he was interviewed by detectives.

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

13 DATED: January 14, 2009

14  
15 /s/ John A. Mendez  
16 UNITED STATES DISTRICT JUDGE  
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24       <sup>1</sup> Except for the requirement that appealable issues be specifically identified, the standard  
25 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.

26       <sup>2</sup> Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).