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

10 TIO DINERO SESSOMS,

11 Petitioner,

No. CIV S-05-1221 JAM GGH P

12 vs.

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

14 Respondent.

ORDER

15 _____/
16 Petitioner is a state prisoner proceeding with appointed counsel. Petitioner has
17 been granted, subsequent to this court's denial of a request for certificate of appealability on
18 grounds of untimeliness, an extension of time and has been deemed to have filed a notice of
19 appeal of timely. See Docket Entry # 56, # 59 and # 60. This matter has been referred to this
20 court for reconsideration of petitioner's application as a timely filed notice of appeal to the
21 October 24, 2008, denial of his petition for writ of habeas corpus, and on that basis, the court will
22 reconsider the request for a certificate of appealability Before petitioner can appeal this
23 decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

24 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the
25 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.
26 § 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)).¹

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 Miranda² 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

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15 /s/ John A. Mendez
16 UNITED STATES DISTRICT JUDGE

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24 ¹ 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 ² Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).