

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

DAVID SHAW, SR.,

Petitioner,

No. CIV S-05-1506 MCE GGH P

VS.

ROSANNE CAMPBELL, et al.,

Respondents.

ORDER

Petitioner, a state prisoner proceeding through counsel, has timely filed a notice of appeal of this court's January 9, 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).

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).

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

5 Petitioner has made a substantial showing of the denial of a constitutional right in
6 the following issues presented in the instant petition: 1) denial of right to present a defense based
7 on exclusion of witnesses who would have impeached the victim (claim 1); 2) ineffective
8 assistance of counsel based on counsel’s failure to renew attempts to have impeachment
9 witnesses testify (claim 2); 3) ineffective assistance of counsel based on failure to call a forensic
10 intoxication expert (claim 3); 4) ineffective assistance of counsel for failure to exclude evidence
11 that petitioner was a violent person (claim 6); 5) ineffective assistance of counsel for failing to
12 properly advise petitioner of his right to testify (claim 8); 6) ineffective assistance of counsel for
13 filing to call defense witnesses (claim 9); 7) ineffective assistance of counsel for failing to
14 adequately cross-examine victim (claim 10).

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

17 Dated: February 6, 2009



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19 MORRISON C. ENGLAND, JR.
20 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.