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

KEVIN MICHAEL SMITH, 2:06-cv-01762-RCT

Petitioner,

vs.

RICHARD KIRKLAND, et al.,

Respondents.

ORDER

_____/

Petitioner Smith, a state prisoner, has timely filed a notice of appeal of this court's November 30, 2009, decision denying his application for a writ of habeas corpus. In order to proceed with the appeal, Petitioner now seeks a certificate of appealability.

Before Petitioner can appeal the dismissal of his habeas corpus petition, a certificate of appealability must issue. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Such a certificate may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To meet this standard, Petitioner must raise an issue that is "debatable among jurists of reason," capable of being resolved differently, or "adequate to deserve encouragement to proceed further." Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R.

1 App. P. 22(b). Petitioner has made a substantial showing of the denial of a constitutional right
2 with respect to the following issue: (1) Whether Petitioner's confession was coerced and
3 involuntary in violation of his constitutional rights. For the reasons stated in the November 30,
4 2009, memorandum decision and order, none of the other issues raised by Petitioner meets the
5 statutory standard for issuance of a certificate of appealability.

6 Accordingly, it is hereby ordered that Petitioner's request for a certificate of
7 appealability is **GRANTED** as to the sole issue contained in Claim No. 1, regarding whether his
8 confession was voluntary, and **DENIED** as to all other issues and claims.

9 DATED: January 4, 2010

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11 /s/ Richard C. Tallman
12 UNITED STATES CIRCUIT JUDGE
13 Sitting by designation
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