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

RAYMOND THOMAS PARHAM,

Petitioner,

2:06-cv-2624-GEB-GGH-P

vs.

KATHY MENDOZA-POWERS,

Respondents.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's December 9, 2008, dismissal 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).

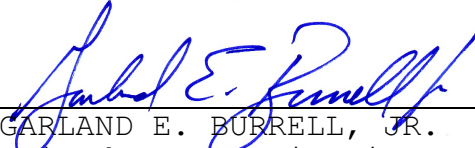
A certificate of appealability should be granted for any issue that petitioner can demonstrate is “debatable among jurists of reason,” could be resolved differently by a different

1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

3 Petitioner has made a substantial showing of the denial of a constitutional right in
4 the following issues presented in the instant petition: 1) whether the trial court erred in not sua
5 sponte instructing on a lesser offense; 2) whether there was insufficient evidence; 3) whether
6 there was a Cunningham violation, i.e., sentence given fro the upper term without the jury having
7 found aggravating circumstances.

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

10 Dated: February 9, 2009

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GARLAND E. BURRELL, JR.
United States District Judge

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26 ¹ Except for the requirement that appealable issues be specifically identified, the standard
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.