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

FRANK TAYLOR,

Petitioner,

2:06-cv-2878-GEB-CHS-P

vs.

D.K. SISTO,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, has filed a timely notice of appeal of this court’s January 20, 2009 order denying his application for 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 “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).

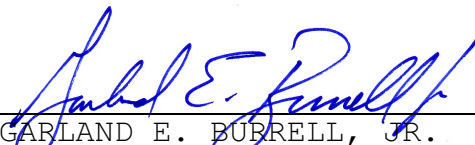
A certificate of appealability should be granted for any issue that petitioner can demonstrate is “debatable among jurists of reason,” could be resolved differently by a different

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 in his petition that (1) the trial court’s
4 comments to prospective jurors during voir dire implicated the Sixth Amendment; (2) his
5 *Wheeler-Batson* challenges were denied in violation of equal protection; and (3) instructional
6 errors violated his due process rights.

7 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability shall
8 issue in the present action.

9 Dated: February 17, 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.