

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

DONOVAN PHIPPS,

Petitioner, No. CIV S-07-0087 WBS CHS F

VS.

MIKE EVANS, Warden, et al.,

Respondents. ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's April 2, 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).

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 court, or is ““adequate to deserve encouragement to proceed further.”” Jennings v. Woodford,

1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

2 Petitioner has made a substantial showing of the denial of a constitutional right in
3 the following issues presented in the instant petition:

4 (1) Ineffective assistance of counsel;
5 (2) Prosecutorial misconduct; and
6 (3) Excessive pre-trial publicity.

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

9 DATED: April 20, 2009

10 
11 WILLIAM B. SHUBB
12 UNITED STATES DISTRICT JUDGE

13 /
14
15
16
17
18
19
20
21
22
23
24

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