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

10 DONOVAN PHIPPS,

11 Petitioner,

No. CIV S-07-0087 WBS CHS P

12 vs.

13 MIKE EVANS, Warden, et al.,

14 Respondents.

ORDER

15 _____/
16 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of
17 this court's April 2, 2009 denial of his application for a writ of habeas corpus. Before petitioner
18 can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R.
19 App. P. 22(b).

20 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
21 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
22 § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues
23 satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

24 A certificate of appealability should be granted for any issue that petitioner can
25 demonstrate is “‘debatable among jurists of reason,’” could be resolved differently by a different
26 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

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11 WILLIAM B. SHUBB
12 UNITED STATES DISTRICT JUDGE
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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.