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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 RAYMOND L. OUBICHON,

12 Petitioner,

2:07-cv-838-GEB-CHS-P

13 vs.

14 CALIFORNIA DEPT. OF CORRECTIONS
15 AND REHABILITATION, et al.,

16 Respondent.

ORDER

17 _____/
18 Petitioner, a state prisoner proceeding pro se, has filed a timely notice of appeal of
19 this court's January 21, 2009 order denying his application for writ of habeas corpus. Before
20 petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c);
21 Fed. R. App. P. 22(b).

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

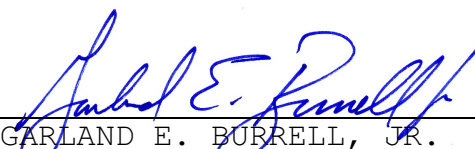
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1 A certificate of appealability should be granted for any issue that petitioner can
2 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different
3 court, or is “adequate to deserve encouragement to proceed further.” *Jennings v. Woodford*,
4 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).¹

5 Petitioner has made a substantial showing in his petition that (1) the trial court
6 erred when it modified petitioner’s conviction to attempted criminal threat without resubmitting
7 the matter to a jury; (2) the trial court gave a jury instruction which undermined the reasonable
8 doubt burden of proof; (3) the readback of testimony to jurors outside the presence of and without
9 notice to petitioner or his attorney violated the Sixth Amendment; (4) there was insufficient
10 evidence to support petitioner’s conviction and insufficient evidence of a prior conviction used as
11 an enhancement; (5) the sentence imposed constitutes cruel and unusual punishment; (6) both trial
12 and appellate counsel rendered ineffective assistance of counsel; and (7) the trial court erred when
13 it denied petitioner’s motion to strike a “strike.”

14 Accordingly, Petitioner is granted a certificate of appealability on the above stated
15 issues.

16 Dated: February 17, 2009

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19 GARLAND E. BURRELL, JR.
United States District Judge

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