

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

RAYMOND L. OUBICHON,

Petitioner, 2:07-cv-838-GEB-CHS-F

VS.

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

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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)).<sup>1</sup>

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.  
20 United States District Judge

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25                   <sup>1</sup> 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.