

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAVID FRANKLIN BARGHOORN,

Petitioner

CV 07-01996 TJH

v.

KEN CLARK, *et al.*,

Respondent

ORDER RE: CERTIFICATE  
OF APPEALABILITY

On October 17, 2012, Petitioner filed a Notice of Appeal and a request for a Certificate of Appealability pursuant to 28 U.S.C. § 2253, The Court has reviewed the matter.

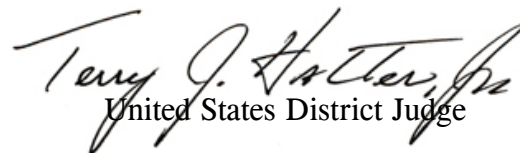
IT IS HEREBY ORDERED.

The Certificate of Appealability is **Granted**. The specific issue(s) satisfy 28 U.S.C. § 2253(c)(2) as follows:

Whether Petitioner's constitutional rights were violated when the trial court instructed the jury using CALJIC No. 17.0, which requires one or more acts to convict, when Petitioner was convicted of Cal. Pen. Code § 288.5, which has a requirement that the jury must convict if they found that the Petitioner had committed three-or-more of the alleged acts.

- The Certificate of Appealability is **Denied** for the following reason(s):
  - There has been no substantial showing of the denial of a constitutional right.
  - The appeal seeks to test the validity of a warrant to remove to another district or place for commitment or trial.
  - The appeal seeks to test the validity of the detention pending removal proceedings.

February 2, 2015

  
United States District Judge