

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ERWIN CARDENAS,

Petitioner

07-CV-02404 TJH

v.

D.K. SISTO, WARDEN,

Respondent

ORDER RE: CERTIFICATE
OF APPEALABILITY

On September 18, 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.

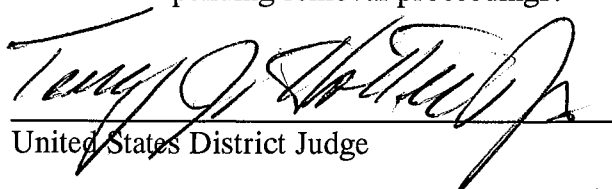
The Certificate of Appealability is GRANTED. The specific issues satisfy § as follows:

An improper jury instruction on the element of intent may be an issue sufficiently debatable to warrant appeal. Petitioner may appeal whether the omission violated his Sixth Amendment rights to effective assistance of counsel and due process. Appeal is, also, appropriate where a reasonably debatable *habeas* claim is denied on procedural grounds without reaching the underlying constitutional issue. Petitioner may appeal whether the imposition of the upper-term sentence violated his right to a jury trial because it is a reasonably debatable issue, and because this Court never reached that underlying constitutional issue.

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.

2/13/13
Date


United States District Judge