

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

MERVIN SANDY DUNFORD,

Petitioner,

No. CIV S-08-0587 JAM GGH P

vs.

M. VEAL,

Respondent.

ORDER

\_\_\_\_\_ /

On August 25, 2008, this action was dismissed because petitioner had not obtained permission from the Ninth Circuit to proceed with this second or successive petition. On June 5, 2008, petitioner filed a request for a certificate of appealability. The court will now direct the Clerk of the Court to process petitioner’s appeal. Fed. R. App. P. 4(a)(2).

Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

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

////

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 of the denial of a constitutional right in  
6 the following issue presented in the instant petition: Whether he should be allowed to proceed  
7 with this successive petition.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. A certificate of appealability is issued in the present action.

10 2. The Clerk of the Court is directed to process petitioner’s appeal filed June 5,  
11 2008.

12 DATED: January 15, 2009

13  
14 /s/ John A. Mendez  
15 UNITED STATES DISTRICT JUDGE

16 dun587.830

17  
18  
19  
20  
21  
22  
23  
24  
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.