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

10 LAWRENCE JASON ELROY,

11 Petitioner,

No. CIV S-08-1584 GGH P

12 vs.

13 MIKE KNOWLES,

14 Respondents.

ORDER

15 _____/
16 Petitioner, a state prisoner proceeding pro se, has filed a late notice of appeal of
17 this court's October 30, 2008, dismissal of his application for a writ of habeas corpus. Petitioner
18 filed this notice of appeal on January 12, 2009. Before petitioner can appeal this decision, a
19 certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

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

24 A certificate of appealability should be granted for any issue that petitioner can
25 demonstrate is “‘debatable among jurists of reason,’” could be resolved differently by a different
26 court, or is “‘adequate to deserve encouragement to proceed further.’” Jennings v. Woodford,

1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

2 The timely filing of a notice of appeal is a jurisdictional requirement. Scott v.
3 Younger, 739 F.2d 1464, 1466 (9th Cir. 1984). Here, the time limit for filing a notice of appeal
4 following entry of judgment is thirty days. See Fed. R. App. P. 4(a). Petitioner's notice of appeal
5 in this action was filed more than thirty days after entry of judgment.

6 For the reasons set forth in the magistrate judge's October 30, 2008, order,
7 petitioner has not made a substantial showing of the denial of a constitutional right. In addition,
8 the notice of appeal was not timely filed. Accordingly, a certificate of appealability should not
9 issue in this action.

10 IT IS HEREBY ORDERED.

11 DATED: February 3, 2009

12 /s/ Gregory G. Hollows

13 UNITED STATES MAGISTRATE JUDGE

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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.