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

JAMES ELMOND DUVAL,

Petitioner,

No. 2:08-cv-1591 JFM

vs.

M.C. KRAMER, Warden,

Respondent.

ORDER

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Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's November 7, 2008 denial of his application for a writ of habeas corpus. 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).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is “debatable among jurists of reason,” could be resolved differently by a different

1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,  
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).<sup>1</sup>

3           Petitioner has made a substantial showing of the denial of a constitutional right in  
4 the following issue presented in the instant petition: whether the state courts’ decisions to deny  
5 his petition for habeas corpus and petition for review were contrary to clearly established law and  
6 resulted in a denial of petitioner’s right to due process.

7           Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is  
8 issued in the present action.

9 DATED: January 14, 2009.

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12 UNITED STATES MAGISTRATE 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.