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

RICHARD ANTHONY CRUZ,

Petitioner,

No. CIV S-08-1604 JAM GGH P

vs.

KEN CLARK, et al.,

Respondents.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's May 21, 2009, dismissal of his application for a writ of habeas corpus on grounds that the action was barred by the statute of limitations . Before petitioner can appeal this decision, a certificate of appealability must issue.¹ 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

¹ Petitioner’s motion is titled “Motion for Certificate of Probable Cause”, but the court will construe it as a motion for a certificate of appealability.

1 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different
2 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
3 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).²

4 Petitioner has failed to make a substantial showing of the denial of a constitutional
5 right. Petitioner’s motion lists the claims in his habeas petition and in one conclusory statement
6 contends that his delay in filing was justified. Petitioner has not addressed the reasons why his
7 petition was dismissed for violating the statute of limitations.

8 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
9 denied.

10 DATED: July 20, 2009

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12 /s/ John A. Mendez _____

13 UNITED STATES DISTRICT JUDGE
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25 ² 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.