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

PATRICK MICHAEL KNOST,

Petitioner,

No. CIV S-08-2564 MCE CHS

vs.

Joseph S. WARSHOLL, II,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding through counsel, filed a timely notice of appeal of this court’s order denying his application for writ of habeas corpus.

Before petitioner can appeal this court’s 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 “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 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 In this case, petitioner alleged that (1) insufficient evidence supported his
3 conviction; and (2) he received ineffective assistance of counsel at trial. Petitioner has failed to
4 make a substantial showing of the denial of a constitutional right with respect to his insufficiency
5 of the evidence claim. On the other hand, petitioner has demonstrated that his ineffective
6 assistance of counsel claim is debatable among jurists of reason and could be resolved differently
7 by a different court.

8 Accordingly, a certificate of appealability shall issue solely with respect to
9 petitioner's claim that he received ineffective assistance of counsel at trial.

10 IT IS SO ORDERED.

11 Dated: April 28, 2010

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14 MORRISON C. ENGLAND, JR.
15 UNITED STATES DISTRICT 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.