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

SOFALO MALTESE BROWN,

Petitioner,

No. CIV S-09-0216 FCD GGH P

vs.

WARDEN, et al.,

Respondent.

ORDER

The Ninth Circuit has remanded this petition to the district court for the limited purpose of granting or denying a certificate of appealability. 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 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).<sup>1</sup>

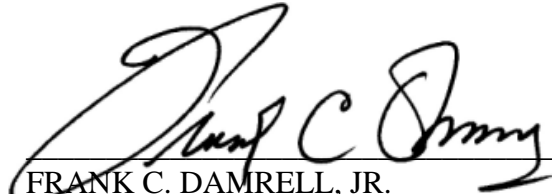
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<sup>1</sup> Except for the requirement that appealable issues be specifically identified, the standard for issuance of a certificate of appealability is the same as the standard that applied to issuance of a certificate of probable cause. Jennings, at 1010.

1           Petitioner has made a substantial showing of the denial of a constitutional right in  
2 the following issue presented in the instant petition: claim 2, whether the prosecutor unlawfully  
3 intimidated a witness.

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

6 DATED: March 4, 2010.

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FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE