

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

REGINAL PRASAD,

Petitioner,

No. 2:09-cv-0980-FCD-JFM (HC)

vs.

JAMES A. YATES, Warden,

Respondent.

ORDER

Petitioner, a state prisoner proceeding through counsel, has timely filed a notice of appeal of this court’s November 24, 2009 dismissal of his application for a writ of habeas corpus as barred by the statute of limitations together with a motion for a certificate of appealability pursuant to 28 U.S.C. § 2253(c) and 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 court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

Where, as here, the petition was dismissed on procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it

