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

RYAN BUI,

No. C 11-03167 SI

Petitioner,

**ORDER GRANTING IN PART
CERTIFICATE OF APPEALABILITY**

v.

ANTHONY HEDGPETH, Warden,

Respondent.

On June 26, 2013, the Court denied petitioner’s habeas corpus petition, and entered judgment accordingly. Petitioner filed a notice of appeal and requested a certificate of appealability. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability will issue where the petitioner has demonstrated that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When granting a certificate of appealability, the court must “indicate [for] which specific issue or issues” the petitioner has “made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2), (3).

Here, the Court’s dismissal was based on a finding that: (1) the state courts did not unreasonably reject petitioner’s claim that the exclusion of his friends and family during *voir dire* violated his right to a public trial, and (2) the state courts did not unreasonably reject petitioner’s claim that excluding testimony of a witness violated his right to present a defense. Regarding the first claim, although the Supreme Court has held that defendants have a right to a public *voir dire*, the state courts found that the exclusion did not violate petitioner’s right because it was a *de minimis* violation. As the Court noted,

1 the Supreme Court has not ruled on the applicability of the *de minimis* exception to the right to a public
2 trial, and lower courts are divided on the issue. Thus, jurists of reason would find it debatable that the
3 state court violated petitioner's public trial rights. However, the Court does not find that reasonable
4 jurists would differ regarding petitioner's second claim that the witness testimony was improperly
5 excluded.

6 Accordingly, the Court hereby GRANTS petitioner's application for a certificate of appealability
7 regarding his Sixth Amendment right to a public trial claim. The clerk shall forward to the court of
8 appeals the case file with this order. See *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).

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10 **IT IS SO ORDERED.**

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12 Dated: July 22, 2013

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15 SUSAN ILLSTON
16 United States District Judge
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