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

WALTER JOSEPH COOK, III,

Petitioner,

No. C 15-06343 WHA

v.

SCOTT KERNAN *et al.*,

Respondents.

**ORDER RE CERTIFICATE OF  
APPEALABILITY**

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In his habeas petition, petitioner Walter Cook presented eight claims upon which he sought relief: (1) state misconduct, (2) *Miranda* and Fifth Amendment violations related to Cook's taped confession, (3) ineffective assistance of counsel at the guilt phase of trial, (4) denial of the right to conflict-free representation, (5) incompetence to stand trial, (6) ineffective assistance of appellate counsel, (7) the failure to create a complete and accurate record, and (8) cumulative trial error. An October 10 order denied the petition, finding the seventh claim for failure to complete the record was procedurally barred, and denying the balance of the claims on the merits (Dkt. No. 54). That order, however, granted Cook a certificate of appealability.

On November 3, Cook appealed. Our court of appeals has now remanded Cook's petition for the limited purpose of issuing a modified certificate of appealability specifying which issues, in particular, are certified for appeal. *Cook v. Kernan*, No. 17-17257, Dkt. No. 5.

1 A certificate of appealability may issue “only if the applicant has made a substantial  
2 showing of the denial of a constitutional right.” 28 U.S.C. 2253. “The petitioner must  
3 demonstrate that reasonable jurists would find the district court’s assessment of the  
4 constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In  
5 cases where multiple trial errors are alleged to have resulted in deprivation of a constitutional  
6 right, the district court may grant a certificate of appealability even if no one issue standing  
7 alone would meet the standard set forth in *Slack*. *Silva v. Woodford*, 279 F.3d 825, 834 (9th  
8 Cir. 2002), *as amended* (Feb. 22, 2002).


9 Here, Cook has made a sufficient showing with respect to the following issues:

- 10 1. Whether reliance on Cook’s taped confession resulted in a prejudicial violation  
11 of his constitutional rights;
- 12 2. Whether state misconduct in the investigation and prosecution of Cook’s case  
13 resulted in a prejudicial violation of his constitutional rights;
- 14 3. Whether Cook was deprived of effective counsel during the guilt phase of his  
15 trial; and,
- 16 4. Whether cumulative trial error related to alleged *Miranda* and Fifth Amendment  
17 violations, ineffective assistance counsel at the guilt phase of Cook’s trial, and  
18 prosecutorial misconduct resulted in a deprivation of Cook’s constitutional  
19 rights.

20 Accordingly, a certificate of appealability is **GRANTED** as to the foregoing issues. A  
21 certificate of appealability is **DENIED** as to all other issues.

22 **IT IS SO ORDERED.**

23 Dated: November 28, 2017.

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26 WILLIAM ALSUP  
27 UNITED STATES DISTRICT JUDGE  
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