

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
27
28

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

LARRY DIXON,)	No. C 04-3038 CW
)	
Petitioner,)	
)	ORDER GRANTING
v.)	CERTIFICATE OF
)	APPEALABILITY
D. L. RUNNELS, Warden,)	
)	
Respondent.)	
_____)	

Petitioner filed a habeas corpus petition pursuant to 28 U.S.C. § 2254. On August 12, 2008, the Court entered judgment denying the petition. Petitioner seeks a certificate of appealability only in regard to his claim based on a violation of Brady v. Maryland, 373 U.S. 83 (1963).

A habeas petitioner may not appeal a final order in a federal habeas proceeding without first obtaining a certificate of appealability (formerly known as a "certificate of probable cause to appeal"). 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of appealability should be granted "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).¹ The certificate

¹Section 2253(c)(2) codified the standard announced by the United States Supreme Court in Barefoot v. Estelle, 463 U.S. 880, 892-93 (1983). In Barefoot, the Court explained that "a substantial showing

1 of appealability must indicate which issue or issues satisfy the
2 showing required by § 2253(c)(2). 28 U.S.C. § 2253(c)(3).

3 The Court finds that Petitioner has made a sufficient
4 showing of the denial of a constitutional right to justify a
5 certificate of appealability in regard to his Brady claim.

6 CONCLUSION

7 Accordingly, the Court grants Petitioner's certificate of
8 appealability.

9
10 IT IS SO ORDERED.

11 

12 DATED: 9/24/08

13 _____
14 CLAUDIA WILKEN
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26

27 _____
28 of the denial of [a] federal right" means that a petitioner "must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner], or that the questions are adequate to deserve encouragement to proceed further." Id. at 893 n.4

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 DIXON,

5 Plaintiff,

Case Number: CV04-03038 CW

CERTIFICATE OF SERVICE

6 v.

7 RUNNELS et al,

8 Defendant.
_____ /

9
10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on September 24, 2008, I SERVED a true and correct copy(ies) of the attached, by placing
12 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
13 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
14 delivery receptacle located in the Clerk's office.

15 Juliet B. Haley
16 California Attorney Generals Office
17 455 Golden Gate Avenue
18 Suite 11000
San Francisco, CA 94102-7004

19 Larry Dixon P-48492
20 San Quentin State Prison
San Quentin, CA 94964

21 Dated: September 24, 2008

22 Richard W. Wiekling, Clerk
23 By: Sheilah Cahill, Deputy Clerk
24
25
26
27
28