UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL DELONGIS,

Petitioner,

v.

DERRICK L. OLLISON, Warden
Ironwood State Prison,

Respondents.
_____/

No. C 06-4236 PJH

ORDER GRANTING CERTIFICATE OF APPEALABILITY

This is a habeas case filed under 28 U.S.C. § 2254 by a state prisoner. On August 28, 2008, this court denied Delongis' petition on the merits. Delongis filed a notice of appeal on September 22, 2008, but failed to file a request for a certificate of appealability ("COA"). However, the court construes the notice of appeal as such a request, and considers whether Delongis is entitled to a COA.

To obtain a COA, Delongis must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Section 2253(c)(3) requires a court granting a COA to indicate which specific issue or issues satisfy the COA standard.

This court finds that the two issues presented by Delongis in his petition for habeas relief meet the above standard and accordingly GRANTS the COA as to those issues. *See*

generally Miller-El v. Cockrell, 537 U.S. 322 (2003). Specifically, Delongis is entitled to a certificate of appealability regarding whether:

> (1) the trial court's failure to instruct on the intoxication defense violated his due process and fair trial rights; and
>
> (2) the trial court's failure to properly instruct on his mental disorder violated his due process and fair trial rights.

Accordingly, the clerk shall forward the file, including a copy of this order, to the Court of Appeals. *See* Fed. R. App. P. 22(b); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).

IT IS SO ORDERED.

Dated: September 26, 2008

PHYLLIS J. HAMILTON
United States District Judge