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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAMICHAEL MADAYAG,  
Petitioner,

No. C 08-4989 PJH

v.

**ORDER GRANTING CERTIFICATE  
OF APPEALABILITY**MICHAEL S. EVANS, Warden,  
Respondent.

This is a habeas case under 28 U.S.C. § 2254 filed by a state prisoner. On August 25, 2009, this court denied Madayag's petition on the merits. Before the court is Madayag's request for a certificate of appealability ("COA").

To obtain a COA, Madayag 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 issues satisfy the COA standard. Here, the court finds that the issues presented by Madayag in his petition meet the above standard and accordingly GRANTS the COA as to those issues. See generally *Miller-El v. Cockrell*, 537 U.S. 322

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(2003). Those issues include whether Madayag:

- (1) received ineffective assistance of counsel when his trial attorney failed to call defense witnesses Segi Lavea and Tyran Townsend;
- (2) received ineffective assistance of counsel when his trial attorney failed to object to the admission of exhibit 9, which included evidence regarding Madayag's prior convictions;
- (3) received ineffective assistance of counsel when his trial attorney failed to request a "defense of others" jury instruction; and
- (4) whether the cumulative effect of the above errors violated his due process rights.

Additionally, Madayag contends that the court erred in concluding that an evidentiary hearing was not warranted on his first claim. The court finds that issue also meets the above standard.

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).

Dated: December 8, 2009



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PHYLLIS J. HAMILTON  
United States District Judge