

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

DAVID TRAMMELL,

Petitioner,

v.

CASE NO. 05-3354-JWL

DAVID R. McKUNE, et al.,

Respondents.

ORDER

This matter is before the court on petitioner's Notice of Appeal, motion for certificate of appealability, and motion for leave to proceed in forma pauperis¹ filed following the dismissal of his application for habeas corpus.

"A certificate of appealability may issue... only if the applicant has made a substantial showing of the denial of a constitutional rights." 28 U.S.C. § 2253(c)(2). To make such a showing, the petitioner must show that "reasonable jurists could debate whether...the petition should have been resolved in a different manner or that the issues presents were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484 (2000)(internal citation omitted). A certificate of appealability must state which specific issue or issues satisfy the substantial showing requirement. § 2253(c)(3).

The court finds the petitioner has made a sufficient showing to obtain a certificate of appealability on the issue whether the petitioner was denied due process by the failure to

¹

Because supporting financial records are not yet before the court, the court defers ruling on the motion for leave to proceed in forma pauperis.

deliver exculpatory evidence to the defense in a timely manner. Although the court ruled against the petitioner, the court agrees that the record presents a matter upon which reasonable jurists could differ and concludes that appellate review is warranted.

IT IS THEREFORE ORDERED petitioner's motion for a certificate of appealability (Doc. 30) is granted.

Copies of this order shall be transmitted to the parties and to the Clerk of the United States Court of Appeals for the Tenth Circuit.

IT IS SO ORDERED.

DATED: This 31st day of August, 2006, at Kansas City, Kansas.

s/ John W. Lungstrum
JOHN W. LUNGSTRUM
United States District Judge