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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Martin Jonassen,  
10 Petitioner,

11 v.

12 Unknown Shartle,  
13 Respondent.  
14

No. CV-17-00284-TUC-DCB (JR)

**ORDER**

15 On February 6, 2019, the United States Court of Appeals for the Ninth Circuit issued  
16 an Order remanding this case for the limited purpose of granting or denying a certificate of  
17 appealability. (Order (Doc. 69). In its Order issued on April 26, 2018, dismissing the  
18 Petitioner's Petition Under 28 U.S.C. § 2241, this Court found that a certificate of  
19 appealability would not issue in the event the Petitioner appealed. Judgment was entered  
20 on April 26, 2018.

21 Plaintiff filed a Motion for Reconsideration, which was denied on May 17, 2018.  
22 (Order (Doc. 46)).<sup>1</sup>

23 On June 26, 2018, Plaintiff filed a Notice of Appeal Re: the Order and Judgment  
24 dismissing his case. (Notice of Appeal (Doc. 48.) Plaintiff, nevertheless, continued to file  
25 various motions in this case which this Court denied because the case was on appeal. On  
26 October 22, 2019, the appellate court issued an Order that the matter was proceeding as a

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28 <sup>1</sup> Plaintiff filed the Notice of Appeal prematurely, which was returned by the Ninth Circuit to this Court and filed in this case by the Clerk of the Court on April 26, 2018. It was denied because of the pendency of the Motion for Reconsideration.

1 request for a certificate of appealability. (Doc. 57.) On October 30, 2018, the appellate  
2 court issued a Mandate relying on a June 26, 2018, Order wherein it had held that it lacked  
3 jurisdiction because the “order challenged in the April 23, 2018, notice of appeal [was] not  
4 final or appealable” because magistrate judges’ findings and recommendations are not  
5 appealable.” (Doc. 58.) This conclusion may have been an error because this case was  
6 never referred to a magistrate judge and no findings and recommendations were ever issued  
7 herein. On November 16, 2018, the appellate court issued an Order denying a certificate  
8 of appealability. (Doc. 61.) This Court understood this decision would end the appeal,  
9 pending issuance of a Mandate.

10 Then, on November 26, 2018, this Court ruled on one of the many motions filed by  
11 Plaintiff during the pendency of the appeal and denied him leave to renew his Motion for  
12 Reconsideration and to continue his IFP status. (Order (Doc. 62)). Still pending are:  
13 Motion for Release Upon Time Served, . . . (Doc. 63), Notice of Addendum (Doc. 67), and  
14 Motion for Complete Excerpt Request (Doc. 68). He also filed a Notice of Appeal Re:  
15 Doc. 62 which is this Court’s Order denying him leave to renew his Motion for  
16 Reconsideration and to continue IFP status. This Court understands this Order (Doc. 62)  
17 to be the subject of the recent directive from the appellate court to issue a finding regarding  
18 a certificate of appealability.

19 The Court has reviewed the Order issued on November 26, 2018. At the time the  
20 Court denied Plaintiff’s request to renew the motion for reconsideration, the Order denying  
21 reconsideration was on appeal. The Court denied it for this reason. Since then, the denial  
22 of reconsideration has been affirmed in that the Ninth Circuit Court of Appeals’ decision  
23 to not issue a certificate of appealability for review of this Court’s Order denying  
24 reconsideration. (Doc. 61.) Correspondingly, there is no basis for issuing a certificate of  
25 appealability for this Court’s Order denying Plaintiff leave to reurge it, here. The Court  
26 also finds that Plaintiff’s repeated filings in case at the same time he is proceeding on appeal  
27 has wasted judicial resources. For all substantive purposes this case is closed, and the  
28 Court will not allow any further filings to be made in it unless and until the Ninth Circuit

1 Court of Appeals should issue a Certificate of Appealability and then reverse and remand  
2 the case for further proceedings. The Court shall strike all the currently pending motions.

3 **Accordingly,**

4 **IT IS ORDERED** that the Court does not issue a Certificate of Appealability in this  
5 Appeal Re: the denial of Plaintiff's request to renew his Motion for Reconsideration.

6 **IT IS FURTHER ORDERED** that all pending motions (Docs. 63 and 68) filed in  
7 this closed case are STRICKEN.

8 **IT IS FURTHER ORDERED** that the Plaintiff shall not make any further filings  
9 in this case unless or until the Ninth Circuit Court of Appeals should issue a Certificate of  
10 Appealability and then remand it for further proceedings.

11 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing  
12 Section 2255 Cases, in the event the Plaintiff files an appeal, the Court declines to issue a  
13 certificate of appealability because reasonable jurists would not find the Court's procedural  
14 ruling debatable. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

15 Dated this 6th day of March, 2019.

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Honorable David C. Bury  
United States District Judge