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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THOMAS D. BRALEY,

Plaintiff,

v.

WASCO STATE PRISON, et al.,

Defendants.

CASE NO. 1:07-cv-01423-OWW-SMS
APPEAL NO. 11-16728

ORDER DISREGARDING MOTION FOR
CERTIFICATE OF AVAILABILITY

(ECF No. 54)

ORDER FOR CLERK TO SERVE COPY OF
THIS ORDER ON NINTH CIRCUIT

Plaintiff Thomas D. Braley (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On June 15, 2011, Plaintiff’s motion for a temporary restraining order was denied. (ECF No. 53.) On July 18, 2011, Plaintiff filed a notice of appeal to the Court of Appeals for the Ninth Circuit, along with a motion for issuance of a certificate of appealability. (ECF Nos. 119, 120.)

Rule 22 of the Federal Rules of Appellate Procedure requires that an applicant who files a notice of appeal in a habeas proceeding must obtain a certificate of appealability under 28 U.S.C. § 2253(c), or a statement why a certificate should not issue, from the district judge who rendered judgment in the action. Fed. R. App. P. 22(b). The district clerk must send the certificate or statement to the court of appeals along with the notice of appeal. *Id.* Plaintiff has requested a certificate of appealability for the notice of appeal he filed in this action on April 4, 2011. However, Plaintiff’s appeal concerns a civil rights action under § 1983, not a habeas proceeding. Therefore, Rule 22 does not apply to Plaintiff’s appeal, and Plaintiff’s application for a certificate of appealability shall be disregarded. Plaintiff is advised that his appeal was processed and forwarded

1 to the Ninth Circuit on July 19, 2011. (ECF No. 56.)

2 Accordingly, THE COURT HEREBY ORDERS that:

- 3 1. Plaintiff's Motion for Issuance of a Certificate of Appealability is DISREGARDED;
4 and
5 2. The Clerk is DIRECTED to serve a copy of this order on the Ninth Circuit.
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9 IT IS SO ORDERED.

10 Dated: July 26, 2011

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE