

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

NANCY ABSTON,

1:08-cv-01483-SMS (HC)

Petitioner,

ORDER DISREGARDING MOTIONS FOR IN
FORMA PAUPERIS ON APPEAL,
CERTIFICATE OF APPEALABILITY, AND
EVIDENTIARY HEARING AND DISCOVERY

v.

KENT EICHENBERGER, Warden

[Docs. 31, 32, 34]

Respondent.

On July 28, 2009, the instant Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 was denied on the merits and judgment was entered in favor of Respondent. In that order, the Court also declined to issue a Certificate of Appealability.

On August 21, 2009, Petitioner filed a notice of appeal, along with a motion for certificate of appealability, motion to proceed in forma pauperis, and motion for evidentiary hearing and discovery.

On October 8, 2008, this Court granted Petitioner’s prior motion for in forma pauperis status, and a party who was permitted to proceed in forma pauperis in the district court may proceed in forma pauperis on appeal without further authorization unless the district court certifies that the appeal is not taken in good faith. See Fed. R. App. P. 24(a)(3). Accordingly, Petitioner’s motion for in forma pauperis status is moot.

As previously stated, in the Court’s July 28, 2009, the Court declined to issue a Certificate of Appealability finding “that reasonable jurists would not find it debatable that the

1 state courts' decision denying Petitioner's petition for writ of habeas corpus were not
2 "objectively unreasonable." Accordingly, Petitioner's motion for a Certificate of Appealability is
3 moot.

4 Petitioner has also requested an evidentiary hearing and production of discovery.
5 Petitioner's motion is addressed to and must be resolved by the United State Court of Appeals for
6 the Ninth Circuit, as this Court no longer has jurisdiction over the case. Accordingly,
7 Petitioner's motion shall be disregarded.

8 Based on the foregoing, Petitioner's motions for in forma pauperis status, certificate of
9 appealability, and evidentiary and discovery, are DISREGARDED.

10
11 IT IS SO ORDERED.

12 **Dated: August 11, 2010**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE