

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 MOTION FOR THE
	)	APPOINTMENT OF COUNSEL (DOC. 39)
)	
v.	)	ORDER DISREGARDING AS MOOT
	)	PETITIONER'S MOTION TO PROCEED IN
WARDEN KENT EICHENBERGER,	)	FORMA PAUPERIS (DOC. 40)
)	
Respondent.	)	ORDER DISREGARDING PETITIONER'S
	)	MOTION FOR RECONSIDERATION OF
_____	)	ORDER DECLINING TO ISSUE A
	)	CERTIFICATE OF APPEALABILITY
	)	(DOC. 41)

Petitioner is a state prisoner who proceed pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), the parties have consented to the jurisdiction of the United States Magistrate Judge. On July 28, 2009, the petition was denied, and judgment was entered for Respondent. On August 21, 2009, Petitioner filed a notice of appeal. On May 18, 2011, the United States Court of Appeals for the Ninth Circuit denied a request for a certificate of appealability and denied all pending motions as moot; hence, the appeal is still pending. (Doc. 38.)

1 Pending before this Court are several motions filed after
2 the notice of appeal was filed.

3 I. Motion for Appointment of Counsel

4 On June 22, 2011, Petitioner filed in this Court a request
5 for appointment of counsel (doc. 39).

6 The motion was addressed to the appellate court. Further,
7 the motion was filed after the notice of appeal was filed. The
8 filing of a timely notice of appeal transfers jurisdiction to the
9 appellate court over the appealable orders and judgments that are
10 encompassed by the notice, and it removes jurisdiction from the
11 district court. Trulis v. Barton, 107 F.3d 685, 694 (9th Cir.
12 1995).

13 Because this Court lacks jurisdiction over the request for
14 counsel, the motion will be disregarded.

15 II. Motion to Proceed in Forma Pauperis

16 On June 22, 2011, Petitioner filed a motion to proceed in
17 forma pauperis (doc. 40).

18 On October 8, 2008, this Court granted Petitioner's
19 previously filed motion to proceed in forma pauperis. In the
20 absence of a contrary statutory provision, a party who was
21 permitted to proceed in forma pauperis in the district court may
22 proceed in forma pauperis on appeal without further authorization
23 unless the district court certifies that the appeal is not taken
24 in good faith. Fed. R. App. P. 24(a)(3).

25 Thus, Petitioner's present motion is moot and will be
26 disregarded.

27 III. Motion to Reconsider Certificate of Appealability

28 Although it was the Court of Appeals that recently denied

1 Petitioner's request for a certificate of appealability (doc.
2 38), Petitioner filed in this Court on June 22, 2011, a motion
3 addressed to this Court seeking reconsideration of the order
4 declining a certificate of appealability (doc. 41). This Court
5 previously declined to issue a certificate of appealability in
6 the order denying the petition that was filed on July 28, 2009.

7 Because the appeal is pending before the Court of Appeals,
8 this Court lacks jurisdiction to consider Petitioner's motion for
9 reconsideration.

10 Accordingly, the motion will be disregarded.

11 IV. Disposition

12 Accordingly, it is ORDERED that Petitioner's motion for the
13 appointment of counsel, motion to proceed in forma pauperis, and
14 motion for reconsideration of the order declining a certificate
15 of appealability are DISREGARDED as moot.

16
17 IT IS SO ORDERED.

18 **Dated: July 26, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE