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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID ALLEN FALLS,

Petitioner,

v.

JAMES A. YATES,

Respondent.

) 1:08-CV-01729 OWW SMS HC

) ORDER DENYING PETITIONER'S
) MOTION FOR EVIDENTIARY HEARING

) [Doc. #59]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on interlocutory appeal to the Ninth Circuit Court of Appeal.

On July 21, 2010, Petitioner filed a notice of appeal of the Court's orders denying motions for extension of time and appointment of counsel. On July 29, 2010, the appeal was processed and the record was transmitted to the Ninth Circuit Court of Appeals where the appeal is currently pending.

On September 29, 2010, Petitioner filed the instant motion for evidentiary hearing. Petitioner is advised that the notice of appeal effectively deprived this Court of jurisdiction to rule on Petitioner's motion. Generally, the filing of a notice of appeal divests the district court of jurisdiction with respect to all matters involved in the appeal. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) (per curiam); Bermudez v. Duenas, 936 F.2d 1064, 1068 (9th

1 Cir.1991); Gould v. Mutual Life Insurance Company of New York, 790 F.2d 769, 772 (9th
2 Cir.1986); Scott v. Younger, 739 F.2d 1464, 1466 (9th Cir.1984); Davis v. United States, 667 F.2d
3 822, 824 (9th Cir.1982). Because the appeal is pending in the Ninth Circuit, this Court is without
4 jurisdiction to rule on Petitioner's motion.

5 Accordingly, the Motion for Evidentiary Hearing is DENIED.

6 IT IS SO ORDERED.

7 **Dated: October 6, 2010**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE