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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TERRENCE BROWN LEE,

1:09-cv-00765-OWW-SMS (HC)

Petitioner,

ORDER GRANTING PETITIONER'S
MOTION FOR IN FORMA PAUPERIS
STATUS ON APPEAL, DISREGARDING
MOTION FOR CERTIFICATE OF

v.

APPEALABILITY AND MOTION FOR
APPOINTMENT OF COUNSEL, AND
DIRECTING CLERK OF COURT TO SERVE
COPY OF ORDER ON NINTH CIRCUIT
COURT OF APPEALS

TOM FELKER,

Respondent.

[Docs. 11, 12, 13]

_____ /

On June 19, 2009, the instant petition for writ of habeas corpus was dismissed with prejudice as successive under 28 U.S.C. § 2241(d)(3), and the case was terminated this same date. (Court Docs. 8, 9.) In that order, the Court also declined to issue a certificate of appealability. (Court Doc. 8.)

On July 6, 2009, Petitioner filed a notice of appeal along with a motion to proceed in forma pauperis on appeal, motion for appointment of counsel, and motion for certificate of appealability. (Court Docs. 10, 11, 12, 13.) On this same date, Petitioner also filed a request for judicial notice. (Court Doc. 16.)

On July 7, 2009, the appeal was processed to the United States Court of Appeals for the Ninth Circuit. (Court Doc. 17.)

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1 DISCUSSION

2 I. Motion to Proceed In Forma Pauperis

3 A party who was permitted to proceed in forma pauperis in the district court may proceed
4 in forma pauperis on appeal without further authorization unless the district court certifies that
5 the appeal is not taken in good faith. See Fed. R. App. Pro. 24(a)(3). In this case, Petitioner was
6 not previously granted in forma pauperis by this Court. Thus, Petitioner is not automatically
7 entitled to proceed in forma pauperis on appeal. Pursuant to 28 U.S.C. § 1915, Petitioner is
8 hereby AUTHORIZED to proceed *in forma pauperis* on appeal. (Court Doc. 13.)

9 II. Motion for Appointment of Counsel

10 Petitioner requests the appointment of counsel to adequately pursue his claims. Because
11 this Court no longer maintains jurisdiction over the action, Petitioner’s request should be
12 addressed to the Ninth Circuit Court of Appeals. Accordingly, Petitioner’s motion for
13 appointment of counsel is DISREGARDED. (Court Doc. 13.)

14 III. Motion for Certificate of Appealability

15 Petitioner has filed a motion for a certificate of appealability. However, because the
16 Court has previously declined to issue a certificate of appealability on June 19, 2009, Petitioner’s
17 request is MOOT. (Court Doc. 12.)

18 IV. Request for Judicial Notice

19 In his request for judicial notice, although it is not entirely clear, it appears that Petitioner
20 is attempting to argue that the merits of his petition warrant an exception to the filing of a
21 successive petition. However, as stated in the Findings and Recommendation of May 1, 2009,
22 “[i]f Petitioner desires to proceed in bringing this petition for writ of habeas corpus, he must file
23 for leave to do so with the Ninth Circuit. See 28 U.S.C. § 2244(b)(3).” (Court Doc. 5, Findings
24 and Recommendation, at p.3.) Accordingly, Petitioner’s request for judicial notice must be
25 denied.

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1 CONCLUSION AND ORDER

2 Based on the foregoing, it is HEREBY ORDERED that:

- 3 1. Petitioner's motion to proceed in forma pauperis on appeal is GRANTED;
- 4 2. Petitioner's motion for appointment of counsel is DISREGARDED;
- 5 3. Petitioner's motion for a certificate of appealability is denied as MOOT;
- 6 4. Petitioner's request for judicial notice is DENIED; and,
- 7 5. The Clerk of Court is directed to serve a copy of this order on the Ninth Circuit
- 8 Court of Appeals.

9 IT IS SO ORDERED.

10 **Dated: July 13, 2009**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE