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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
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6 CORNELIO VEDOLLA ESPINOZA,) 1:10-cv-01521-LJO-SKO-HC
7)
8 Petitioner,) ORDER DENYING PETITIONER'S MOTION
9) FOR A CERTIFICATE OF
10 v.) APPEALABILITY (DOC. 18)
11)
12 MIKE McDONALD, Warden,)
13)
14 Respondent.)
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13 Petitioner is a state prisoner proceeding pro se with a
14 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.
15 The matter has been referred to the Magistrate Judge pursuant to
16 28 U.S.C. § 636(b)(1) and Local Rules 302 and 303. Pending
17 before the Court is Petitioner's motion for a certificate of
18 appealability filed on May 23, 2011.

19 The docket reflects that on December 7, 2010, the Court
20 directed Respondent to file within sixty (60) days a response to
21 the petition that had been filed by Petitioner on August 23,
22 2010. (Doc. 5.) After receiving an extension of time,
23 Respondent timely filed an answer to the petition on March 7,
24 2011, in which the merits of the petition were addressed. (Doc.
25 14.) Petitioner did not file a traverse. On May 23, 2011,
26 before any dispositive order had issued from the Court,
27 Petitioner filed a notice of appeal. The notice of appeal did
28 not identify any order or judgment from which Petitioner

1 purported to appeal. On the same date, Petitioner filed the
2 instant motion for certificate of appealability.

3 A district court must issue or deny a certificate of
4 appealability when it enters a final order adverse to the
5 applicant. Rule 11(a) of the Rules Governing Section 2254 Cases
6 in the District Courts.

7 The Court of Appeals has jurisdiction of appeals from "all
8 final decisions" of the district courts except where direct
9 review may be had in the Supreme Court. 28 U.S.C. § 1291.
10 Pursuant to 28 U.S.C. § 1291, a judgment is final for purposes of
11 appeal when it 1) is a full adjudication of the issues, and 2)
12 clearly evidences the judge's intention that it be the court's
13 final act in the matter. Patel v. Del Taco, Inc., 446 F.3d 996,
14 1000 (9th Cir. 2006).

15 Here, no final decision has been made in Petitioner's case
16 because the issues have not been adjudicated.

17 Therefore, there is no final order before the Court that is
18 adverse to the applicant within the meaning of habeas Rule 11(a).

19 Accordingly, because it would be premature to issue a
20 certificate of appealability, it is ORDERED that Petitioner's
21 motion for a certificate of appeal is DENIED.

22 IT IS SO ORDERED.

23 **Dated: June 8, 2011**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE