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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BILLY RAE MALDONADO,

Plaintiff,

vs.

JAMES YATES, et al.,

Defendants.

1:11-cv-01735-LJO-GSA-PC

ORDER DISREGARDING MOTION FOR
CERTIFICATE OF APPEALABILITY
(Doc. 24.)

Billy Rae Maldonado (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

On June 13, 2013, the Court dismissed this action based on Plaintiff’s failure to state a claim upon which relief may be granted under § 1983, and judgment was entered. (Docs. 19, 20.) On February 28, 2014, Plaintiff filed a notice of appeal to the Ninth Circuit Court of Appeals, which was assigned case number 14-15465. (Docs. 21, 23.) On March 20, 2014, Plaintiff filed a motion for a certificate of appealability pursuant to Rule 22 of the Federal Rules of Appellate Procedure. (Doc. 24.)

Rule 22 of the Federal Rules of Appellate Procedure requires that an applicant who files a notice of appeal *in a habeas proceeding* must obtain a certificate of appealability under 28 U.S.C. § 2253(c), or a statement why a certificate should not issue, from the district judge who rendered judgment in the action. Fed. R. App. P. 22(b) (emphasis added). Plaintiff requests a

1 certificate of appealability for the appeal he filed in this action. However, because Plaintiff's
2 appeal concerns a civil rights action under § 1983 and not a habeas proceeding, Rule 22 is not
3 applicable. Therefore, Plaintiff's motion for a certificate of appealability shall be disregarded.
4 Plaintiff is advised that his appeal was processed and forwarded to the Ninth Circuit on March
5 11, 2014. (Doc. 22.)

6 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for a
7 certificate of appealability, filed on March 20, 2014, is DISREGARDED.

8
9 IT IS SO ORDERED.

10 Dated: March 21, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE