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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN WILLIAMS,

Petitioner,

No. CIV S-98-1816 FCD EFB P

vs.

ROBERT L. AYERS,

Respondent.

ORDER


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Petitioner is a state prisoner without counsel seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254. This court denied the petition on September 1, 2005. Petitioner appealed before this court considered whether a certificate of appealability should issue. Accordingly, the Ninth Circuit Court of Appeals remanded this action for the purpose of this court to make a finding on that issue. Thus, on July 14, 2009, the court considered the matter, and found that a certificate of appealability should not issue. Thereafter, the Clerk of this Court processed petitioner’s appeal and transmitted the record to the Ninth Circuit Court of Appeals. On August 12, 2009, petitioner filed a request for an extension of time to file a motion for a certificate of appealability. Pursuant to the appellate rules, a habeas petitioner “cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253.” Fed. R. App. Pro. Therefore, this court’s decision that the certificate should issue is not dispositive.

1 This court may, however, consider petitioner's request for additional time.

2 Good cause appearing, it is ORDERED that petitioner's August 12, 2009, motion for an  
3 extension of time is granted and petitioner has 30 days from the date this order is served to file  
4 an application for a certificate of appealability in the Ninth Circuit Court of Appeals.

5 Dated: September 3, 2009.

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8 FRANK C. DAMRELL, JR.  
9 UNITED STATES DISTRICT JUDGE  
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