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

MARK D. FOLEY,

Petitioner,

No. 2:01-cv-00714-MCE JFM P

vs.

ORDER

JAMES ROWLAND, et al.,

Respondents.

\_\_\_\_\_ /

Petitioner is a state prisoner proceeding with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Judgment was entered in this action on August 18, 2004. On July 18, 2011, petitioner filed, pro se, a request “that the court allow [him] back in to the courts to continue [his] appeal (rights) process afforded to me under the United States Constitution.” By order filed July 2, 2012, petitioner’s request was construed as a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)(6). On September 12, 2012, the Magistrate Judge issued findings and recommendations recommending that the motion be denied. Petitioner did not file objections to the findings and recommendations. By Order filed September 28, 2012, the findings and recommendations were adopted in full and petitioners Rule 60(b)(6) motion was denied.

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1           On November 1, 2012, petitioner filed a notice of appeal and a request for  
2 certificate of appealability, dated October 22, 2012. On November 2, 2012, the notice of appeal  
3 was processed to the United States Court of Appeals for the Ninth Circuit. On January 25, 2013,  
4 the United States Court of Appeals remanded the matter to this Court for the limited purpose of  
5 granting or denying a certificate of appealability.

6           Pursuant to Rule 11 of the Rules Governing Section 2254 Cases in the United  
7 States District Courts, “[t]he district court must issue or a deny a certificate of appealability  
8 when it enters a final order adverse to the applicant.” Rule 11, 28 U.S.C. foll. § 2254. A  
9 certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a  
10 substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The court  
11 must either issue a certificate of appealability indicating which issues satisfy the required  
12 showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).  
13 For the reasons set forth in the Magistrate Judge’s September 12, 2012 findings and  
14 recommendations, to which no objections were interposed, petitioner has not shown that he is  
15 entitled to relief from the judgment entered in this action on August 18, 2004. Moreover, for the  
16 reasons set forth in the Magistrate Judge’s July 1, 2004 findings and recommendations, which  
17 were adopted in full by this Court on August 18, 2004, and footnote two of the September 12,  
18 2012 findings and recommendations, petitioner has not made a substantial showing of the denial  
19 of a constitutional right. Accordingly, no certificate of appealability should issue.

20           In accordance with the above, IT IS HEREBY ORDERED that:

21           1. This Court declines to issue a certificate of appealability; and

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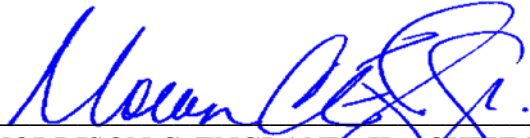
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2. The Clerk of the Court is directed to serve a copy of this order on the United States Court of Appeals for the Ninth Circuit.

DATED: February 14, 2013

  
MORRISON C. ENGLAND, JR., CHIEF JUDGE  
UNITED STATES DISTRICT JUDGE