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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK D. FOLEY,
Petitioner,
v.
MARTIN BITER, Warden,
Respondent.

No. 2:01-cv-0714 MCE GGH P

ORDER

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 14, 2015, the United States Court of Appeals for the Ninth reversed this Court’s September 28, 2012 Order (ECF No. 40) denying Petitioner’s Motion for Relief from Judgment (ECF No. 28), and remanded for further proceedings. On August 6, 2015, the mandate issued. ECF No. 50.

The Ninth Circuit determined that this Court’s September 28, 2012 order denying Petitioner’s Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b) was in error, as it was incorrectly based on the finding that Petitioner’s counsel had not abandoned him. The Ninth Circuit held that not only was Petitioner abandoned by his attorney, but that this abandonment prevented Petitioner from timely appealing the denial of his habeas petition. The Ninth Circuit further held that this Court erred in finding that Petitioner’s Motion for Relief from Judgment was untimely.

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Accordingly, IT IS HEREBY ORDERED that:


1. This Court's September 28, 2012 Order (ECF No. 40) is VACATED;
2. Petitioner's Motion for Relief from Judgment (ECF No. 28) is GRANTED;
3. Judgment entered August 18, 2004 (ECF No. 20) is VACATED and RE-ENTERED

effective immediately; and

4. Petitioner is ordered to file a notice of appeal and motion for certificate of appealability within thirty days (30) of the date that this Order is electronically filed.

IT IS SO ORDERED.

Dated: August 19, 2015



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