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

MICHAEL V. LUJAN,

Petitioner,

No. CIV S-06-0923 LKK EFB P

vs.

WARDEN JAMES YATES,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 29, 2009, this court issued an order stating that respondent’s motion to dismiss stands submitted. On June 3, 2009, petitioner filed a motion for a certificate of appealability. Under the provisions of 28 U.S.C. § 2253, petitioner must be granted a certificate of appealability in order to proceed with the appeal. Fed. R. App. P. 22(b). Section 2253 also provides that an appeal in a habeas corpus proceeding may only be taken from a “final order.” 28 U.S.C. § 2253; *see also Browder v. Director, Ill. Dep’t of Corrections*, 434 U.S. 257, 265 (1978); *Van Pilon v. Reed*, 799 F.2d 1332, 1335 (9th Cir. 1986). Final orders are those that leave nothing to be done but the execution of the judgment. *Catlin v. United States*, 324 U.S. 229, 233 (1945). In the context of habeas corpus proceedings, a final order disposes of all claims and either denies or grants habeas relief. *Blazak v. Ricketts*, 971 F.2d 1408, 1410 (9th Cir. 1992) (per curiam).

1 The court will not issue a certificate of appealability in this action. The order from which
2 petitioner appeals did not dispose of any of his claims and did not deny or grant relief. It simply
3 acknowledged that respondent's motion to dismiss is pending and that petitioner has filed an
4 opposition brief. Accordingly, it is hereby ORDERED that petitioner's June 3, 2009 motion for
5 a certificate of appealability is denied.

6 DATED: August 13, 2009.

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9 LAWRENCE K. KARLTON
10 SENIOR JUDGE
11 UNITED STATES DISTRICT COURT