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

CLYDE SHERWOOD MOSS,

Petitioner,

No. 2:07-cv-2429 FCD JFM (HC)

vs.

TOM VOSS, EXECUTIVE DIRECTOR
COALINGA STATE HOSPITAL,

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 December 10, 2009, judgment was entered in this court denying the petition. On February 4, 2010, petitioner filed a notice of appeal. Also on February 4, 2010, petitioner filed a request for leave to file an untimely notice of appeal. On February 18, 2010, this court declined to issue a certificate of appealability on the basis that the notice of appeal was filed more than thirty days after entry of judgment. Petitioner’s request to file an untimely notice of appeal was not addressed. On May 21, 2010, the appeal before the Ninth Circuit was remanded for the limited purpose of allowing this court to rule on petitioner’s February 4, 2010 motion to file an untimely notice of appeal.

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1 A. Extension of Time to Appeal

2 In the February 4, 2010 motion, petitioner seeks leave to file an untimely notice
3 of appeal on the ground that he was unable to secure assistance in filing his notice of appeal until
4 following the time limit for filing. Good cause appearing, the court hereby grants petitioner's
5 February 4, 2010 request and deems the notice of appeal timely filed.

6 B. Certificate of Appealability

7 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the
8 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.
9 § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues
10 satisfy the required showing or must state the reasons why such a certificate should not issue.
11 Fed. R. App. P. 22(b).

12 Where, as here, the petition was dismissed on procedural grounds, a certificate of
13 appealability "should issue if the prisoner can show: (1) 'that jurists of reason would find it
14 debatable whether the district court was correct in its procedural ruling'; and (2) 'that jurists of
15 reason would find it debatable whether the petition states a valid claim of the denial of a
16 constitutional right.'" Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v.
17 McDaniel, 529 U.S. 473, 484 (2000)).

18 After careful review of the entire record herein, this court finds that petitioner has
19 not satisfied the first requirement for issuance of a certificate of appealability in this case.
20 Specifically, there is no showing that jurists of reason would find it debatable whether this court
21 lacks jurisdiction over petitioner's claims.

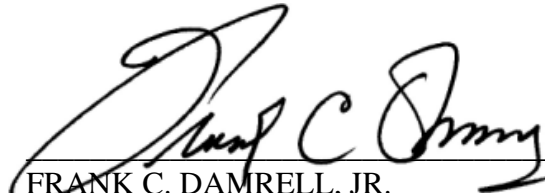
22 Good cause appearing, IT IS HEREBY ORDERED that

- 23 1. Petitioner's February 4, 2010 request to file an untimely notice of appeal is
24 granted;
- 25 2. Petitioner's February 4, 2010 notice of appeal is deemed timely filed;
- 26 3. This court's order dated February 18, 2010 is vacated; and

1 4. Petitioner's February 4, 2010 application for certificate of appealability is
2 denied.

3 IT IS SO ORDERED.

4 DATED: September 14, 2010.

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