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

LARRY R. LOPEZ,

Petitioner,

No. 2:07-cv-2742-MCE-JFM (HC)

vs.

T. FELKER,

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 September 18, 2009, judgment was entered in this court denying the petition. On November 2, 2009, petitioner filed a notice of appeal. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

Federal Rule of Appellate Procedure 22(b) requires the district court judge who rendered a judgment denying such petition to “either issue a certificate of probable cause or state the reasons why such a certificate should not issue.”


The timely filing of a notice of appeal is a jurisdictional requirement. Scott v. Younger, 739 F.2d 1464, 1466 (9th Cir. 1984). Here, the time limit for filing a notice of appeal following entry of judgment is thirty days. See Fed. R. App. P. 4(a). Petitioner’s notice of

1 appeal was dated by petitioner on October 20, 2009, and filed stamped in this court on November
2 2, 2009. October 20, 2009, the earliest date that might be deemed the filing date for the notice of
3 appeal in accordance with Houston v. Lack, 487 U.S. 266 (1988), is more than thirty days after
4 entry of judgment.

5 The United States Court of Appeals for the Ninth Circuit has held that the
6 issuance of a certificate of probable cause cannot vest the court of appeals with jurisdiction if
7 jurisdiction is not proper in that court. Hayward v. Britt, 572 F.2d 1324, 1325 (9th Cir. 1978).
8 The rationale of Hayward applies with equal force to a certificate of appealability. For these
9 reasons, the court declines to issue a certificate of appealability.

10 IT IS SO ORDERED.

11 Dated: November 9, 2009

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13 MORRISON C. ENGLAND, JR.
14 UNITED STATES DISTRICT JUDGE
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