IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY PRINCE FRANKLIN,

Petitioner, No. CIV S-08-1276 FCD CHS P

vs.

JAMES WALKER, Warden,

Respondent. ORDER

_____/

Petitioner, a pro se state prisoner proceeding in forma pauperis, sought a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Judgment was entered and this action terminated on February 2, 2010. Petitioner filed a timely notice of appeal after which a certificate of appealability issued with respect to his unconstitutional sentencing claim. The appeal was processed to the Ninth Circuit Court of Appeals on February 23, 2010. On April 12, 2010, petitioner filed a motion to proceed in forma pauperis. Although the motion does not specify, based on the procedural posture of this case it is construed as an application to proceed in forma pauperis *on appeal*.

Rule 24 of the Federal Rules of Appellate Procedure provides, in part:

> a party who has been permitted to proceed in an action in the district court in forma pauperis . . . may proceed on appeal in forma pauperis without further authorization unless . . . the district court

> shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed . . . .

Fed. R. App. 24. This court has not certified pursuant to Fed. R. App. 24 that petitioner's appeal is taken in bad faith, or otherwise found that he is not entitled to proceed in forma pauperis on appeal. Petitioner is already authorized to proceed on appeal in forma pauperis by virtue of his previous successful application; accordingly, his second motion for leave to proceed in forma pauperis will be denied as unnecessary.

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

1. Petitioner's April 12, 2010 application to proceed in forma pauperis on appeal is denied as unnecessary. See Fed. R. App. P. 24.

DATED: April 13, 2010

Charlene H. Sorrentino

CHARLENE H. SORRENTINO
UNITED STATES MAGISTRATE JUDGE