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

FORREST RICHARDSON,

Petitioner,

No. CIV S-08-2964 FCD EFB P

vs.

JAMES YATES,

Respondent.

ORDER

_____/

Petitioner has timely filed a notice of appeal of this court’s January 21, 2010 denial of his application for a writ of habeas corpus. On February 3, 2010, the clerk of the court issued a notice indicating that petitioner was required to file a certificate of appealability to pursue his appeal. Petitioner’s counsel advised the court that a certificate of appealability is not required in his case because he challenges the propriety of prison discipline rather than a judgment of a state court.

Where “the detention complained of arises out of process issued by a State Court,” a habeas petitioner must obtain a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A); *see also* Fed. R. App. P. 22(b)(1). A certificate of appealability is therefore “not required when a state prisoner challenges an administrative decision regarding the execution of his sentence.” *White v. Lambert*, 370 F.3d 1002, 1010 (9th Cir. 2004); *see also Rosas v. Nielsen*, 428 F.3d

1 1229, 1231 (9th Cir. 2005). “Thus, the district court looks at who made the detention decision
2 complained of by the state prisoner, an administrative body or a judicial one, in determining
3 whether a certificate of appealability is required.” *Rosas*, 428 F.3d at 1231 (internal quotation
4 marks omitted). Here, the target of the petition is not the state court judgment or sentence, but
5 the administrative discipline imposed by prison authorities. Accordingly, petitioner is not
6 required to obtain a certificate of appealability.

7 Petitioner further seeks permission to proceed *in forma pauperis* on appeal. *See*
8 28 U.S.C. § 1915(a); Fed. R. App. P. 24(a)(1). The court file reflects that petitioner paid the
9 filing fee for this action. Rule 24(a) of the Federal Rules of Appellate Procedure provides that a
10 party to a district court action who desires to proceed *in forma pauperis* on appeal must file a
11 motion in the district court which:

- 12 (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party’s
13 inability to pay or to give security for fees and costs;
14 (B) claims an entitlement to redress; and
15 (C) states the issues that the party intends to present on appeal.

16 Fed. R. App. P. 24(a)(1).

17 On February 16, 2010, petitioner filed a declaration stating his inability to pay or
18 to give security for fees and costs. The declaration fails to include many details prescribed by
19 Form 4 of the Appendix of Forms, however. In addition, petitioner has not described the issues
20 he intends to present on appeal.

21 Accordingly, IT IS HEREBY ORDERED that:

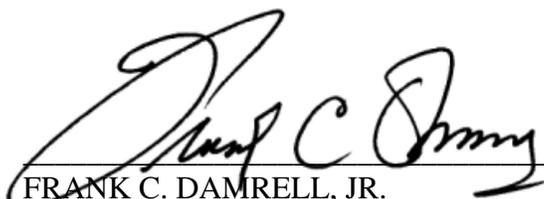
22 1. Petitioner’s July 16, 2009, request to proceed *in forma pauperis* on appeal is denied
23 without prejudice. The Clerk of the Court is directed to serve a copy of this order on the United
24 States Court of Appeals for the Ninth Circuit, and plaintiff is advised that he may file a motion to
25 proceed *in forma pauperis* in the United States Court of Appeals for the Ninth Circuit. *See* Fed.
26 R. App. P. 24(a)(5).

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2. The Clerk of the Court is directed to process Petitioner's appeal without the issuance of a certificate of appealability.

IT IS SO ORDERED.

DATED: April 27, 2010.



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE