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

10 JAMES D. NIVETTE,

11 Petitioner,

No. CIV S-09-1173 JAM DAD P

12 vs.

13 JOHN MARSHALL,

14 Respondent.

ORDER

15 _____/
16 Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas
17 corpus pursuant to 28 U.S.C. § 2254.

18 On March 1, 2011, judgment was entered in this court denying the petition. On
19 June 20, 2011, petitioner filed a motion for appointment of counsel to assist him on appeal. On
20 July 6, 2011, the court advised petitioner that the court's docket reflected that he had not filed a
21 notice of appeal in this case. The court also denied petitioner's motion for appointment of
22 counsel without prejudice to the refile of such a motion with the Ninth Circuit.

23 Petitioner has filed a second motion for appointment of counsel to assist him on
24 appeal and has addressed this motion to the Ninth Circuit. Petitioner is advised that this court
25 has not processed an appeal on his behalf because he has not filed a notice of appeal. If
26 petitioner wishes to appeal the judgment in this case he must file a notice of appeal. Once the

1 court processes his appeal, he may file a motion for appointment of counsel with the Ninth
2 Circuit.

3 Accordingly, IT IS HEREBY ORDERED that petitioner's motion for appointment
4 of counsel (Doc. No. 27) is denied without prejudice to refile with the Ninth Circuit.

5 DATED: August 3, 2011.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE