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

JOHN ALAN PARVIN,

Petitioner,

No. 2:09-cv-2198-JFM (HC)

vs.

MATTHEW CATE, et al.,

Respondents.

ORDER

_____ /

Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter is proceeding before a United States Magistrate Judge with the consent of the parties pursuant to 28 U.S.C. § 636(c). See Consents to Jurisdiction by United States Magistrate Judge, filed August 19, 2009 and October 23, 2009.

On March 23, 2010, petitioner timely filed a notice of appeal of this court’s March 1, 2010 dismissal of his application for a writ of habeas corpus as barred by the statute of limitations together with a motion for a certificate of appealability. See 28 U.S.C. § 2253(c); Rule 11, 28 U.S.C. foll. § 2254; Fed. R. App. P. 22(b). By order filed March 30, 2010, petitioner’s motion for a certificate of appealability was denied. Petitioner’s appeal was processed to the United States Court of Appeals for the Ninth Circuit on the same day.

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1 On April 27, 2010, petitioner filed a notice of appeal from the March 30, 2010
2 order, together with a motion for a certificate of appealability issued by a district court judge.
3 While the United States Court of Appeals for the Ninth Circuit has authority concurrent with this
4 court to issue or deny a certificate of appealability, see 28 U.S.C. § 2253(c), the March 30, 2010
5 order is not an appealable order. Moreover, pursuant to the consent of the parties this court had
6 the authority to direct the entry of judgment in this action, see 28 U.S.C. § 636(c), and
7 jurisdiction over this action now lies in the United States Court of Appeals for the Ninth Circuit.
8 For that reason, petitioner's April 27, 2010 motion for issuance of a certificate of appealability by
9 a district court judge will be denied.

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

11 1. Petitioner's April 27, 2010 motion is denied; and

12 2. The Clerk of the Court is send a copy of this order to the United States Court
13 of Appeals for the Ninth Circuit.

14 DATED: June 28, 2010.

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17 UNITED STATES MAGISTRATE JUDGE

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