

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

CLARENCE JOSEPH HAYES,

Petitioner,

No. 2:09-cv-2433-WBS-JFM (HC)

vs.

D.K. SISTO,

Respondent.

ORDER

\_\_\_\_\_ /

On March 11, 2011, the Honorable William B. Shubb adopted the undersigned’s findings and recommendations recommending that respondent’s motion to dismiss be granted and this action be dismissed with prejudice. Also on March 11, 2011, Judge Shubb issued a certificate of appealability on the issue of whether petitioner should be allowed to amend his petition. Judgment was entered accordingly.

On June 8, 2011, petitioner filed a document titled “Application for Certificate of Appealability.” The court construes this motion as a notice of appeal and a request for a certificate of appealability.

Upon review of the document and the docket, IT IS HEREBY ORDERED that:

1. Plaintiff’s request for a certificate of appealability is denied as moot in light of Judge Shubb’s March 11, 2011 issuance of a certificate; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

2. Although plaintiff's notice of appeal appears to be untimely, see Fed. R. App. P. 4, the Clerk of the Court is directed to forward the notice to the Ninth Circuit Court of Appeals.

DATED: August 8, 2011.

  
UNITED STATES MAGISTRATE JUDGE

/014;hay2433.coa