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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNY LYNN WARREN
Petitioner,
v.
DOMINGO URIBE, JR.,
Respondent.

No. 2:10-cv-2120-MCE-EFB P

ORDER

Petitioner, a state prisoner proceeding without counsel and in forma pauperis, filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Judgment was entered in this action on August 26, 2013 and the court declined to issue a certificate of appealability. Despite that ruling, petitioner now requests a certificate of appealability. ECF No. 68. As the court has already decided that petitioner is not entitled to a certificate of appealability, petitioner’s request is denied. Petitioner may, however, seek a certificate of appealability from the United States Court of Appeals for the Ninth Circuit under Federal Rule of Appellate Procedure 22. Rule 11(a), Rules Governing Section 2254 Cases.

Petitioner also requests leave to proceed in forma pauperis on appeal. ECF No. 69. The Federal Rules of Appellate Procedure provide as follows:

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A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization unless the district court . . . certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis

Fed. R. App. P. 24(a)(3). This court has not certified that petitioner’s appeal is not taken in good faith and has not otherwise found that plaintiff is not entitled to proceed on appeal in forma pauperis. Accordingly, petitioner’s motion for leave to proceed in forma pauperis on appeal will be denied as unnecessary.

Accordingly, IT IS HEREBY ORDERED that petitioner’s request for a certificate of appealability and request to proceed in forma paupers (ECF No. 68, 69) are denied.

Dated: October 8, 2013.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE