

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON STRIBLING,

No. 2:10-cv-3247 CKD P

Plaintiff,

V.

ORDER

BORTOLEMEDI,

Defendant.

Plaintiff is a California prisoner pro se. A jury trial was recently held in this 42 U.S.C. § 1983 action, the result of which was a finding in favor of defendant. On November 12, 2014, plaintiff filed a motion for retrial and for a certificate of appealability.

With respect to the motion for a new trial, plaintiff argues that a video of him detailing the events at issue was entered into evidence in violation of plaintiff's Fifth Amendment right not to incriminate himself. However, because these civil proceedings are not proceedings in which plaintiff can incriminate himself, plaintiff's Fifth Amendment rights were not violated. Also, plaintiff's assertion that his counsel rendered ineffective assistance in violation of the Sixth Amendment by not objecting to the video also has no merit because the Sixth Amendment right to effective assistance of counsel does not apply in civil proceedings.

As for the request for a certificate of appealability, it is not necessary to obtain a certificate of appealability in a 42 U.S.C. § 1983 case (as it is in a 28 U.S.C. § 2254 habeas corpus case) in

1 order to appeal. Therefore, plaintiff's request for a certificate of appealability will be denied as
2 unnecessary.¹

3 Accordingly IT IS HEREBY ORDERED that:

4 1. Plaintiff's motion for retrial (ECF No. 175) is denied; and
5 2. Plaintiff's motion for a certificate of appealability is denied.

6 Dated: November 18, 2014

Carolyn K. Delaney

7 CAROLYN K. DELANEY
8 UNITED STATES MAGISTRATE JUDGE

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¹ See 28 U.S.C. § 2253.