

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

JOSHUA NICKERSON,

Petitioner,

vs.

DAVE DAVEY, Acting Warden, California
State Prison-Corcoran,

Respondent.

No. 2:13-cv-00214-JKS

ORDER
[Re: Motion at Docket No. 29]

At Docket No. 29, Joshua Nickerson, a state prisoner proceeding *pro se*, filed a letter requesting this Court to reconsider its prior order denying him habeas relief. In that letter, Nickerson also asks the Court for a certificate of appealability and to allow him an opportunity to file a Traverse. Docket No. 29. at 2-3.

This Court denied Nickerson habeas relief and a certificate of appealability on May 30, 2014. Docket Nos. 18, 19. By letter dated July 8, 2014, Nickerson requested an extension of time to file a request for a certificate of appealability. Docket No. 21. Because Nickerson had not yet filed a notice of appeal with this Court, the Court construed his letter as a motion for an extension of time to file a notice of appeal, which it granted. Docket No. 23. Nickerson then filed a notice of appeal, which was docketed on August 11, 2014. Docket No. 24. The record before this Court indicates that Nickerson's appeal is currently pending before the Ninth Circuit Court of Appeals.

The filing of a notice of appeal transfers to the appellate court jurisdiction over the matters appealed, and the district court is divested of jurisdiction over those aspects of the case involved in the appeal. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per

curiam). Because the notice of appeal was filed before the instant motion, this Court lacks jurisdiction to consider the motion. *See Scott v. Younger*, 739 F.2d 1464, 1466 (9th Cir. 1984) (“In this circuit, the rule has generally been stated that the filing of a notice of appeal divests the district court of jurisdiction to dispose of the motion after an appeal has been taken, without a remand from [the Ninth Circuit Court of Appeals].” (citation omitted)).

IT IS THEREFORE ORDERED THAT the motion at Docket No. 29 is **DENIED**.

Dated: November 13, 2014.

/s/James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
Senior United States District Judge