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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK LEE DEARWESTER,
Plaintiff,
v.
SACRAMENTO COUNTY SHERIFF'S
DEPARTMENT,
Defendant.

No. 2:13-cv-2064 MCE DB P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action under 42 U.S.C. § 1983. Plaintiff alleges defendant's establishment of a postcard-only mail policy violated his First Amendment rights. Plaintiff filed a document on August 28, 2017 entitled "Motion for Certificate of Appealability of 08/09/17 Order." (ECF No. 88.) The August 9 order affirmed the undersigned's denial of plaintiff's motion for the appointment of counsel. (ECF Nos. 87, 80.)

Plaintiff is advised that a certificate of appealability is only necessary in a habeas corpus proceeding. See 28 U.S.C. § 2253. In this civil rights action, plaintiff need not seek permission from this court to appeal. That said, plaintiff is further advised that the Court of Appeals does not have jurisdiction to consider the appeals of orders that are not final or appealable. See 28 U.S.C. § 1291; WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). The Ninth

1 Circuit has held that the district court's denial of a motion for the appointment of counsel in a
2 civil rights case is not a final or appealable order under 28 U.S.C. § 1291. See Kuster v. Block,
3 773 F.2d 1048, 1049 (9th Cir. 1985); see also Akmal v. Centerstance Inc., 503 F. App'x 538 (9th
4 Cir. 2013); Burnett v. Faecher, 361 F. App'x 900 (9th Cir. 2010).

5 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for a certificate of
6 appealability (ECF No. 88) is denied.

7 Dated: September 7, 2017

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11 DEBORAH BARNES
12 UNITED STATES MAGISTRATE JUDGE
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