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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES R. SMITH,
Petitioner,
V.
FRED FOULK, Warden,
Respondent.

No. 2:13-cv-02387-KJN P

ORDER

Petitioner is a state prisoner, proceeding pro se and in forma pauperis, in this habeas corpus action filed pursuant to 28 U.S.C. § 2254. Petitioner consented to the jurisdiction of the undersigned magistrate judge for all purposes. See 28 U.S.C. § 636(c); Local Rule 305(a). On December 18, 2013, the undersigned dismissed this action without prejudice, on the ground that the instant petition is successive. (See ECF No. 6.) Plaintiff was directed to seek leave from the Ninth Circuit Court of Appeals authorizing this court to consider the petition in a newly-filed action. 28 U.S.C. § 2244(b)(3). For this reason, the court declined to issue the certificate of appealability referenced in 28 U.S.C. § 2253.

Now, five months later, plaintiff requests a certificate of appealability, based on the alleged merits of his underlying petition. Plaintiff is informed that he does not require a certificate of appealability to seek leave from the Court of Appeals to proceed with a successive petition. Therefore, for the reasons previously stated, petitioner’s request will be denied.

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's request for a certificate of appealability (ECF No. 9) is denied.

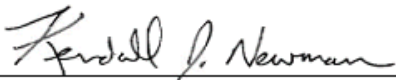
2. The Clerk of Court is directed to send plaintiff, together with service of this order, a copy of the court's order filed December 18, 2013 (ECF No. 6).

3. Plaintiff is informed that the court will not consider or address any further filings in this action.

SO ORDERED.

Dated: June 6, 2014

/smit2387.noCOA


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE