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E-Filed 1/11/11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANGELO ESCALANTE,

No. C 10-1583 RS (PR)

Petitioner,

**ORDER DENYING APPLICATION
TO PROCEED IN FORMA PAUPERIS
ON APPEAL**

v.

S. HUBBARD, et al.,

Respondents.

This is a closed federal habeas action, which is currently on appeal, filed by a *pro se* state prisoner pursuant to 28 U.S.C. § 2254. Petitioner's application to proceed *in forma pauperis* ("IFP") on appeal is DENIED on grounds that the appeal is not taken in good faith. An appeal may not be taken IFP if the trial court certifies it is not taken in good faith. Fed. R. App. P. ("FRAP") 24(a)(3)(A). "Not taken in good faith" means "frivolous." *Ellis v. United States*, 356 U.S. 674, 674–75 (1958); *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). This Court certifies that any appeal taken from the order denying the petition for writ of habeas corpus and judgment will not be taken in good faith and is therefore frivolous because the state court's adjudication of petitioner's claims did not result in a decision that was contrary to, or involved an unreasonable application of, clearly


No. C 09-1382 RS (PR)
ORDER DENYING IFP APPLICATION

1 established federal law, nor did it result in a decision that was based on an unreasonable
2 determination of the facts in light of the evidence presented in the state court proceeding.

3 The Clerk shall forthwith notify petitioner and the Court of Appeals of this order. *See*
4 FRAP 24(a)(4). Petitioner may file a motion for leave to proceed IFP on appeal in the Court
5 of Appeals within thirty days after service of notice of this order. *See* FRAP 24(a)(5). Any
6 such motion “must include a copy of the affidavit filed in the district court and the district
7 court’s statement of reasons for its action.” *Id.*

8 **IT IS SO ORDERED.**

9 DATED: January 11, 2011


RICHARD SEEBORG
United States District Judge

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