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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MILTONOUS KINGDOM,

Petitioner,

v.

A.A. LAMERQUE,

Respondent.

No. C 04-2342 PJH

**ORDER GRANTING CERTIFICATE
OF APPEALABILITY**

This is a habeas case under 28 U.S.C. § 2254 filed by petitioner Miltonous Kingdom (“Kingdom”), a California prisoner currently incarcerated at Folsom State Prison. Kingdom filed his federal habeas petition on June 15, 2004. On February 22, 2007, the court granted respondent’s motion to dismiss Kingdom’s habeas petition as untimely, and judgment was entered on February 23, 2007. The judgment was affirmed on appeal on September 18, 2008. Kingdom’s motion for relief from the February 23, 2007 judgment pursuant to Federal Rule of Civil Procedure 60(b), filed November 26, 2008, came on for hearing before this court on January 7, 2009. The court denied the motion on the record, and memorialized its ruling in a written summary order filed that same day. On January 12, 2009, Kingdom filed a notice of appeal, which the court treats as request for a certificate of appealability (“COA”).

To obtain a COA, Kingdom must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Section 2253(c)(3) requires a court\

1 granting a COA to indicate which specific issue or issues satisfy the COA standard.
2 Here, the court finds that Kingdom is entitled to a COA on the issue of whether or not he
3 is entitled to Rule 60(b) relief based on the motion filed before this court on November
4 26, 2008.

5 Accordingly, the clerk shall forward the file, including a copy of this order, to the
6 Ninth Circuit Court of Appeals. See Fed. R. App. P. 22(b); *United States v. Asrar*, 116
7 F.3d 1268, 1270 (9th Cir. 1997).

8 **IT IS SO ORDERED.**

9 Dated: January 13, 2009



PHYLLIS J. HAMILTON
United States District Judge

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