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

EMIL JOSEPH WILHELM EKDAHL, III,

No. C 07-03642 SBA (PR)

Petitioner,

**ORDER DENYING REQUEST FOR
CERTIFICATE OF APPEALABILITY AS
UNNECESSARY**

v.

ROBERT AYERS, Warden,

Respondent.

Petitioner has filed a notice of appeal following this Court's denial of his habeas petition challenging as a violation of his constitutional rights the denial of parole by the California Board of Parole Hearings (Board).¹ The Court construes the notice of appeal as an application for a certificate of appealability. See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997); 28 U.S.C. § 2253(c)(3).

Petitioner's request for a certificate of appealability is DENIED as unnecessary. The Ninth Circuit recently made clear that a state prisoner challenging the administrative decision by the Board to deny his request for parole need not obtain a certificate of appealability. See Rosas v. Nielsen, 428 F.3d 1229, 1232 (9th Cir. 2005).

The Clerk of the Court shall process the notice of appeal.

IT IS SO ORDERED.

DATED: 1/12/09


SAUNDRA BROWN ARMSTRONG
United States District Judge

¹ The Board of Prison Terms was abolished effective July 1, 2005, and replaced with the Board of Parole Hearings. Cal. Penal Code § 5075(a).

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

EMIL JOSEPH WILHELM EKDAHL III,

Plaintiff,

v.

AYERS et al,

Defendant.

Case Number: CV07-03642 SBA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 12, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Emil J.W. Ekdahl C-79199
San Quentin State Prison
1 Main Street
San Quentin, CA 94974

Dated: January 12, 2009

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk