

1 IN THE UNITED STATES DISTRICT COURT
 2
 3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

4
 5 EMIL JOSEPH WILHELM EKDAHL, III,

No. C 07-03642 SBA (PR)

6 Petitioner,

**ORDER GRANTING REQUEST TO
 PROCEED IN FORMA PAUPERIS ON
 APPEAL**

7 v.

(Docket nos. 32, 33)

8 ROBERT AYERS, Warden,

9 Respondent.
 10 _____/

11 Petitioner filed a notice of appeal following this Court's denial of his habeas petition
 12 challenging as a violation of his constitutional rights the denial of parole by the California Board of
 13 Parole Hearings (Board).¹ The Court construed the notice of appeal as an application for a
 14 certificate of appealability. See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997); 28
 15 U.S.C. § 2253(c)(3). The Ninth Circuit has made clear that a state prisoner challenging the
 16 administrative decision by the Board to deny his request for parole need not obtain a certificate of
 17 appealability. See Rosas v. Nielsen, 428 F.3d 1229, 1232 (9th Cir. 2005). Therefore, in an Order
 18 dated January 12, 2009, the Court denied Petitioner's request for a certificate of appealability as
 19 unnecessary. The Court then directed the Clerk of the Court to process the notice of appeal.

20 Petitioner now moves for leave to proceed in forma pauperis (IFP) on appeal.

21 Petitioner paid the district court filing fee; therefore, he was not proceeding IFP in this Court.
 22 He therefore does need permission to proceed IFP on appeal. Rule 24(a)(3) of the Federal Rules of
 23 Appellate Procedure, which provides that a party proceeding IFP in district court may continue in
 24 that status on appeal unless the district court certifies that the appeal is not taken in good faith, does
 25 not apply. Instead, 28 U.S.C. 1915(a)(3), which provides that an appeal may not be taken IFP if the
 26 trial court certifies that it is not taken in good faith, applies. § 1915(a)(3) does not turn on whether
 27 IFP was granted in district court.
 28 _____

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).

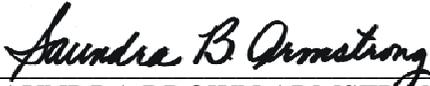
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In the present case, the Court concludes that the appeal was taken in good faith. Petitioner's declaration in support of his application shows that he qualifies to proceed IFP. Accordingly, good cause appearing, Petitioner's request for leave to proceed IFP on appeal is GRANTED.

This Order terminates Docket nos. 32 and 33.

IT IS SO ORDERED.

DATED: 1/21/09


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 EMIL JOSEPH WILHELM EKDAHL III,

5 Plaintiff,

6 v.

7 AYERS et al,

8 Defendant.

Case Number: CV07-03642 SBA

CERTIFICATE OF SERVICE

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

11 That on January 22, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Emil J.W. Ekdahl C-79199
16 San Quentin State Prison
17 1 Main Street
18 San Quentin, CA 94974

Dated: January 22, 2009

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