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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JOHN HARDY JACKSON,

Petitioner,

vs.

EXECUTIVE DIRECTOR OF THE
DEPARTMENT OF CORRECTIONS OF
CALIFORNIA,

Respondent.

Case No: C 08-02254 SBA

**ORDER GRANTING PLAINTIFF'S
MOTION TO PROCEED IN
FORMA PAUPERIS ON APPEAL**

Dkt. 20

Through counsel, Petitioner John Hardy Jackson (“Jackson”) filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, seeking to challenge his 2006 California state conviction for child molestation. On September 30, 2011, the Court denied the petition and entered judgment for Respondent. Dkt. 17, 18. The Court declined to issue a certificate of appealability. Dkt. 17 at 16.

On November 14, 2011, Petitioner’s counsel filed a notice of appeal and a request to proceed in forma pauperis (“IFP”) on appeal. Under the IFP statute, “an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). “The good faith requirement is satisfied if the petitioner seeks review of any issue that is ‘not frivolous.’” Gardner v. Pogue, 558 F.2d 548, 551 (9th Cir. 1977) (noting that the test for obtaining a certificate of probable cause (now referred to as a certificate of appealability) is “stricter” than a request to proceed IFP on appeal). For purposes of section 1915, an appeal is frivolous if it lacks any “arguable basis in law or

1 fact.” See Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d
2 1221, 1225 (9th Cir. 1984). Here, the Court has found that none of Petitioner’s claims have
3 merit. Nonetheless, the Court cannot conclude that his claims are “frivolous” under
4 Neitzke. Accordingly,

5 IT IS HEREBY ORDERED THAT Petitioner’s request to proceed in forma pauperis
6 on appeal is GRANTED.

7 IT IS SO ORDERED.

8 Dated: June 20, 2012


SAUNDRA BROWN ARMSTRONG
United States District Judge

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