

United States District Court
For the Northern District of California

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

ELIAS D. AVILA,)
)
 Petitioner,)
)
 v.)
)
 MIKE MCDONALD, Warden,)
)
 Respondent.)
 _____)

No. C 08-3424 SBA (PR)

**ORDER DENYING REQUEST FOR
CERTIFICATE OF
APPEALABILITY AND MOTION
FOR LEAVE TO PROCEED IN
FORMA PAUPERIS ON APPEAL**

(Docket Nos. 22 & 23)

This matter came before the Court for consideration of Petitioner's pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his 2006 conviction in San Benito County Superior Court. The petition was denied on its merits. Petitioner has filed a motion for leave to proceed in forma pauperis on appeal. Because the appeal is not taken in good faith, Petitioner's request to appeal in forma pauperis (Docket No. 23) is DENIED. See 28 U.S.C. § 1915(a)(3).

A certificate of appealability was denied in the order denying the petition. *See* Rules Governing Section 2254 Cases 11(a). Consequently Petitioner's motion for such a certificate (Docket No. 22) is DENIED as moot.

IT IS SO ORDERED.

DATED: 10/20/10


SAUNDRA BROWN ARMSTRONG
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ELIAS D. AVILA,

Plaintiff,

v.

FELKER et al,

Defendant.

Case Number: CV08-03424 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 October 20, 2010, 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.

Elias Daniel Avila F-34850
High Desert State Prison
P.O. Box 3030
Susanville, CA 96127

Dated: October 20, 2010

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