

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

3
4 JOHN SHAW aka JOHN HSIA,
5 Petitioner,
6 v.
7 TIM PEREZ, Acting Warden,
8 Respondent.

No. C 13-1739 CW (PR)

ORDER DENYING PETITIONER'S
MOTIONS TO PROCEED IFP ON
APPEAL, TO APPOINT COUNSEL ON
APPEAL AND FOR RELIEF FROM
JUDGMENT

Doc. Nos. 26, 27 and 31

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11 On January 16, 2014, this Court issued an Order Granting
12 Respondent's Motion to Dismiss this petition based on
13 untimeliness. On the same day, judgment was entered in favor of
14 Respondent. On February 3, 2014, Petitioner filed a notice of
15 appeal. On February 7, 2014, the Ninth Circuit filed a notice
16 that it had received Petitioner's notice of appeal and assigned it
17 case number 14-15231. Doc. no. 29. Also, on February 3, 2014,
18 Petitioner filed motions for leave to appeal in forma pauperis
19 (IFP) and for appointment of counsel on appeal. On February 10,
20 2014, Petitioner filed a motion for relief from the judgment filed
21 on January 16, 2014.

22 Under Rule 24(a)(1) of the Federal Rules of Appellate
23 Procedure, Petitioner's request to proceed IFP on appeal is
24 DENIED. Although he states that he is unable to pay the filing
25 fee because of his poverty, he does not attach an affidavit that
26 "shows in detail prescribed by Form 4 of the Appendix of Forms the
27 party's inability to pay or to give security for fees and costs."
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1 Fed. R. App. P. 24(a)(1)(A). Because Petitioner paid the filing
2 fee when his case was before the district court, see doc. no. 6,
3 he has not previously been granted IFP status and, thus, Federal
4 Rule of Appellate Procedure 24(a)(3) does not apply.

5 The Sixth Amendment's right to counsel does not apply in
6 habeas corpus actions. Knaubert v. Goldsmith, 791 F.2d 722, 728
7 (9th Cir. 1986). However, 18 U.S.C. § 3006A(a)(2)(B) provides
8 that in habeas cases, whenever "the court determines that the
9 interests of justice so require, representation may be provided
10 for any financially eligible person" Petitioner's claims
11 are not particularly complex. The interests of justice do not
12 require appointment of counsel. The motion for appointment of
13 counsel is DENIED.

14 Plaintiff's motion for relief from judgment is DENIED.
15 Because the motion was filed after the filing of a notice of
16 appeal, the Court lacks jurisdiction to consider the motion, see
17 Natural Res. Def. Council, Inc. v. Southwest Marine Inc., 242 F.3d
18 1163, 1166 (9th Cir. 2001) (once notice of appeal is filed,
19 district court loses jurisdiction), and the Court is not disposed
20 to entertain the motion, so the Court of Appeals need not remand
21 for ruling, see Williams v. Woodford, 384 F.3d 567, 586 (9th Cir.
22 2002).

23 Based on the foregoing, the Court orders as follows:

24 1. Plaintiff's motion to proceed IFP on appeal is denied.
25 Doc. no. 26.

26 2. Plaintiff's motion for appointment of counsel on appeal is
27 denied. Doc. no. 27.

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3. Plaintiff's motion for relief from judgment is denied.

Doc. no. 31.

4. The Clerk of the Court shall mail a copy of this Order to the Ninth Circuit Court of Appeals.

IT IS SO ORDERED.

Dated: 2/12/2014


CLAUDIA WILKEN
United States District Judge

cc: NC