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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DANIEL WILLIAM THOMAS,
Petitioner,
vs.
JACK PALMER, et al.,
Respondents.

Case No. 3:09-cv-00633-LRH-VPC

ORDER

On November 20, 2014, this court denied the petition for a writ of habeas corpus. Order (#43). On December 9, 2014, petitioner mailed to the court of appeals a motion for a certificate of appealability (#45) and a motion for appointment of counsel (#46). The court of appeals has forwarded both motions to this court.

Petitioner has not filed a separate notice of appeal, and this court will construe the motion for a certificate of appealability as a timely filed notice of appeal. See Tinsley v. Borg, 895 F.2d 520, 523 (9th Cir. 1990) (construing request for probable cause as notice of appeal); Fed. R. Civ. P. 4(c) (mailbox rule for prisoners). Nothing in the motion itself causes the court to depart from its determination that a certificate of appealability should not issue.

Petitioner's motion for appointment of counsel (#46) is a matter better addressed by the court of appeals.

IT IS THEREFORE ORDERED that the clerk of the court shall treat the motion for a certificate of appealability (#45) as a notice of appeal and process the appeal accordingly.


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IT IS FURTHER ORDERED that the motion for a certificate of appealability (#45) is **DENIED** in part to the extent that petitioner is seeking a certificate of appealability.

IT IS FURTHER ORDERED that the motion for appointment of counsel (#46) is **DENIED**.

DATED this 29th day of December, 2014.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE