

JUL 25 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JESSE BRIEN BRITTAIN,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>STEPHEN W. MAYBERG, Director of the Department of Mental Health; et al.,</p> <p>Respondents - Appellees.</p>

No. 07-55962

D.C. No. CV-07-00638-R

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted July 23, 2008**
San Francisco, California

Before: CANBY, HAWKINS, and TALLMAN, Circuit Judges.

Appellant's motion to proceed in forma pauperis, filed on June 17, 2008, is granted. The clerk shall amend the docket to reflect appellant's in forma pauperis

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

status.

On May 23, 2008, this court concluded that, to the extent a certificate of appealability is required in this appeal, the request for a certificate of appealability is denied. By same order, this court determined that, to the extent a certificate of appealability is unnecessary, appellant shall show cause as to why the district court's June 8, 2007, judgment should not be summarily affirmed.

A review of the record, including appellant's "motion for certificate of appealability," received by this court on June 16, 2008, indicates that the questions raised in this appeal are so insubstantial as to not require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Petitioner's argument that the requirements of the Antiterrorism and Effective Death Penalty Act (AEDPA) do not apply to him, is foreclosed by *Duncan v. Walker*, 533 U.S. 167, 176 (2001).

Accordingly, we summarily affirm the district court's judgment.

AFFIRMED.¹

¹Appellant's "motion for certificate of appealability," received on June 16, 2008, is ordered filed.