

OCT 12 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSEPH WELDON SMITH,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>E.K. MCDANIEL, Warden,</p> <p>Respondent - Appellee.</p>

No. 08-99004

D.C. No. 2:07-CV-00318-JCM-RJJ

ORDER*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted October 5, 2010
San Francisco, California

Before: KLEINFELD and GRABER, Circuit Judges, and MOLLOY, District Judge.**

Under Thompson v. Frank, 599 F.3d 1088, 1090 (9th Cir. 2010) (per curiam), we lack appellate jurisdiction to review the district court’s stay-and-abeyance order. Accordingly, the appeal is DISMISSED.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Donald W. Molloy, United States District Judge for the District of Montana, sitting by designation.

