

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TONY WAYNE ANDERSON, #658252 §
VS. § CIVIL ACTION NO. 6:10cv430
DIRECTOR, TDCJ-CID §

MEMORANDUM OPINION AND ORDER
DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

Came on for consideration, the Appellant’s motion to proceed *in forma pauperis* on appeal (docket entry #53). Appellant did not proceed *in forma pauperis* in the District Court. On February 21, 2012, the assigned Magistrate Judge filed a Report and Recommendation (R&R) that Appellant’s petition be dismissed with prejudice and a certificate of appealability be denied (docket entry #41), in part because Appellant had made a knowing and voluntary guilty plea in the trial court, which foreclosed most avenues of federal habeas relief, and in part because Appellant’s remaining ineffective assistance of counsel claims were without merit. The Appellant then filed objections (docket entry #45) to the Magistrate Judge’s R&R. In summary, Appellant expanded some of his ineffective assistance of counsel claims, without merit. He added little to his original petition, including on the issue of entering into a knowing and voluntary guilty plea. *See generally* Objections.

This Court therefore overruled the Objections, denied Appellant’s petition, and denied a Certificate of Appealability (“COA”) on March 21, 2012. *See* docket entries #47, 48.

For the reasons stated in the Report and Recommendation and the Order of Dismissal, Appellant does not have a “good faith” non-frivolous issue for appeal as required for leave to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A). *Baugh v. Taylor*, 117 F.3d 197, 202 n.21 (5th Cir. 1997) (To comply with Rule 24 and to inform the Court of Appeals of the reasons for its certification, a district court may incorporate by reference its order dismissing an appellant’s claims (in the context of a civil rights action pursuant to 42 U.S.C. §

1983)). Additionally, as noted above, Appellant did not proceed *in forma pauperis* in the District Court. See Fed. R. App. P. 24(a)(3). Furthermore, because the Appellant has not shown that he is entitled to a certificate of appealability, he also has not shown that he is entitled to proceed *in forma pauperis* on appeal. *United States v. Delario*, 120 F.3d 580, 582-83 (5th Cir. 1997). Finally, Appellant attached a recent copy of his inmate trust fund account. Although he filed an affidavit that he does not own any property, stocks or bonds or have any money in the bank or in his trust fund account, see docket entry #53 at PageID #2810, his trust fund account statement shows that he has a regular source of funds, has received \$405.00 over the past six months and has had an average deposit in his account of \$67.60 over the past six months. He therefore could pay an *in forma pauperis* fee on his appeal, even if he were required to pay it in increments. Therefore, Appellant is denied leave to proceed *in forma pauperis* on appeal. It is accordingly

ORDERED that the motion to proceed *in forma pauperis* on appeal (docket entry #53) is **DENIED**. All future motions should be filed with the Clerk of the United States Court of Appeals for the Fifth Circuit.

So ORDERED and SIGNED this 9th day of July, 2012.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE