

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, SOUTHERN DIVISION

JERRY RANDOLPH McBEE,            )  
# 105694,                            )  
                                      )  
      Petitioner,                    )  
                                      )  
      v.                                )  
                                      )  
LEEPOSEY DANIELS, Warden,        )  
and LUTHER STRANGE,                )  
Alabama Attorney General,         )  
                                      )  
      Respondents.                 )

CIVIL ACTION NO.  
1:14cv1230-MHT  
(WO)

JERRY RANDOLPH McBEE,            )  
# 105694,                            )  
                                      )  
      Petitioner,                    )  
                                      )  
      v.                                )  
                                      )  
LEEPOSEY DANIELS, Warden,        )  
and LUTHER STRANGE,                )  
Alabama Attorney General,         )  
                                      )  
      Respondents.                 )

CIVIL ACTION NO.  
1:15cv15-MHT  
(WO)

ORDER

These cases are now before the court on petitioner's notice of appeal (doc. no. 31), which the court is treating as a motion to proceed on appeal in forma pauperis.

28 U.S.C. § 1915(a)(3) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous," Coppedge v. United States, 369 U.S. 438, 445 (1962), or "has no substantive merit." United States v. Bottoson, 644 F.2d 1174, 1176 (5th Cir. Unit B May 15, 1981) (per curiam), cert. denied, 454 U.S. 903 (1981); see also Rudolph v. Allen, 666 F.2d 519, 520 (11th Cir. 1982) (per curiam), cert. denied, 457 U.S. 1122 (1982); Morris v. Ross, 663 F.2d 1032 (11th Cir. 1981), cert. denied, 456 U.S. 1010 (1982). Applying this standard, this court is of the opinion that the petitioner's appeal is without a legal

or factual basis and, accordingly, is frivolous and not taken in good faith. See, e.g., Rudolph v. Allen, supra; Brown v. Pena, 441 F. Supp. 1382 (S.D. Fla. 1977), aff'd without opinion, 589 F.2d 1113 (5th Cir. 1979).

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Accordingly, it is ORDERED that the petitioner's motion to proceed on appeal in forma pauperis is denied; and that the appeal in these cases is certified, pursuant to 28 U.S.C. § 1915(a)(3), as not taken in good faith.

DONE, this the 17th day of August, 2015.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE