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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TYRONE JUSTIN COWAN,
Petitioner,
v.
DEBBIE ASUNCION,
Respondent.

No. 1:16-cv-01826-DAD-SAB-HC
ORDER DENYING MOTION FOR
CERTIFICATE OF APPEALABILITY AND
GRANTING MOTION TO PROCEED IN
FORMA PAUPERIS ON APPEAL
(Doc. Nos. 22, 23)

Petitioner is a state prisoner who proceeded *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) On August 23, 2017, the court adopted the magistrate judge’s findings and recommendation, denied the petition, and declined to issue a certificate of appealability. (Doc No. 19.) On September 21, 2017, petitioner filed a notice of appeal along with a motion for certificate of appealability and a motion to proceed *in forma pauperis* on appeal. (Doc. Nos. 21–23.)

In the August 23, 2017 order denying the petition for writ of habeas corpus, the court found that petitioner had not made the required showing under 28 U.S.C. § 2253(c). (Doc. No. 19 at 2.) The court previously declined to issue a certificate of appealability. Recognizing this, petitioner does not ask the district court to issue a certificate of appealability itself, but rather to “forward this motion to the Ninth Circuit Court of Appeals.” (Doc. No. 22 at 4.) A habeas petitioner may seek a certificate of appealability from the Ninth Circuit Court of Appeals directly.

1 See 28 U.S.C. § 2253(c)(1) (“Unless a *circuit justice* or judge issues a certificate of appealability.
2 . . .”); *Lambright v. Stewart*, 220 F.3d 1022, 1024 (9th Cir. 2000) (noting the district court had
3 denied a certificate of appealability, but the circuit court had granted one). Therefore, petitioner
4 should direct his request to the Clerk of the Court for the Ninth Circuit Court of Appeals. The
5 motion for a certificate of appealability is denied without prejudice to the petitioner submitting
6 his request to the Ninth Circuit Court of Appeals.

7 Petitioner paid the filing fee for the instant habeas action, but now moves to proceed *in*
8 *forma pauperis* on appeal. Rule 24(a) of the Federal Rules of Appellate Procedure provides that:

9 [A] party to a district-court action who desires to appeal in forma
10 pauperis must file a motion in the district court. The party must
attach an affidavit that:

11 (A) shows in the detail prescribed by Form 4 of the
12 Appendix of Forms the party’s inability to pay or to give
security or fees and costs;

13 (B) claims an entitlement to redress; and

14 (C) states the issues that the party intends to present on
15 appeal.

16 Fed. R. App. P. 24(a)(1).

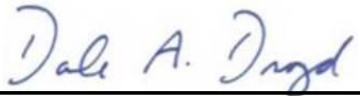
17 Here, petitioner has demonstrated his inability to pay. (*See* Doc. No. 23.) In his
18 concurrently filed motion for a certificate of appealability, petitioner claims entitlement to redress
19 and states the issues he seeks to raise on appeal. Accordingly, the court will grant the motion to
20 proceed *in forma pauperis* on appeal.

21 Given the foregoing:

- 22 1. Petitioner’s motion for a certificate of appealability (Doc. No. 22) is denied; and
- 23 2. Petitioner’s motion to proceed *in forma pauperis* on appeal (Doc. No. 23) is granted.

24 IT IS SO ORDERED.

25 Dated: October 5, 2017

26 
UNITED STATES DISTRICT JUDGE