

1
2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA

5 RICHARD DEWAYNE HUNT,
6
7 Petitioner,
8
9 v.
10 CLAUDE FINN, et al.,
11 Respondents.

No. 2:07-CV-0461-FVS

ORDER DENYING REQUEST FOR
CERTIFICATE OF APPEALABILITY

12 **THIS MATTER** comes before the Court on Petitioner's application
13 for a certificate of appealability. (Ct. Rec. 19). Petitioner has
14 additionally filed a request to proceed in forma pauperis. (Ct. Rec.
15 20). Petitioner is proceeding pro se. Respondent is represented by
16 Amy Daniel.

17 **DISCUSSION**

18 **I. Certificate of Appealability**

19 On December 3, 2009, Petitioner's petition for writ of habeas
20 corpus was denied, and judgment was entered. (Ct. Rec. 16).
21 Petitioner filed a notice of appeal and thereafter requested the
22 issuance of a certificate of appealability on the issue of whether
23 there was "some evidence" to support the Board of Parole Hearings'
24 finding that Petitioner remains a danger to society. (Ct. Rec. 19).

25 "Unless a circuit justice or judge issues a certificate of
26 appealability, an appeal may not be taken to the court of appeals from
 . . . the final order in a habeas corpus proceeding in which the

1 detention complained of arises out of process issued by a State
2 court." 28 U.S.C. § 2253(c)(1)(A). A district court possesses the
3 authority to issue a certificate of appealability. *United States v.*
4 *Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997). The issuance of a
5 certificate of appealability is a jurisdictional prerequisite to
6 appeal. *Gatlin v. M.K. Madding*, 189 F.3d 882, 886 (9th Cir. 1999),
7 *cert. denied*. 528 U.S. 1087 (2000). "A certificate of appealability
8 may issue . . . only if the applicant has made a substantial showing
9 of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2);
10 *Hiivala v. Wood*, 195 F.3d 1098, 1104 (9th Cir. 1999). To make a
11 substantial showing, Petitioner must establish that "reasonable
12 jurists could debate whether (or, for that matter, agree that) the
13 petition should have been resolved in a different manner or that the
14 issues presented were 'adequate to deserve encouragement to proceed
15 further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting
16 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

17 In this case, there was clearly "some evidence" justifying the
18 Board's decision to deny parole based on Petitioner being a danger to
19 society. That evidence includes Petitioner's commitment offense,
20 pattern of criminal conduct, failure to profit from society's previous
21 attempts to correct his criminality, weak residential and employment
22 plans for release, and lack of participation in self-help therapy
23 programs. (Ct. Rec. 16 at 10).

24 The Court has reviewed the file and is fully informed. The Court
25 finds that reasonable jurists would not find it debatable that
26 Petitioner has failed to show an entitlement to federal habeas corpus

1 relief. Petitioner has failed to make a substantial showing of the
2 denial of a constitutional right. Petitioner's request for the
3 issuance of a certificate of appealability (**Ct. Rec. 19**) is therefore
4 **DENIED.**

5 **II. In Forma Pauperis**

6 On December 15, 2009, Petitioner also filed a motion for leave to
7 proceed in forma pauperis. (Ct. Rec. 20). A party who was permitted
8 to proceed in forma pauperis in the district court may proceed in
9 forma pauperis on appeal without further authorization unless the
10 district court certifies that the appeal is not taken in good faith.
11 Fed. R. App. P. 24(a)(3). In this case, Petitioner paid the filing
12 fee and did not proceed in this Court in forma pauperis. Thus,
13 Petitioner is not automatically entitled to proceed in forma pauperis
14 on appeal.

15 Rule 24(a)(1) of the Federal Rules of Appellate Procedure states
16 that a party who desires to appeal in forma pauperis must file a
17 motion in the district court and attach to that motion a completed
18 application to proceed in forma pauperis, along with the issues the
19 party intends to present on appeal. Petitioner's request, however,
20 was not accompanied by a completed application to proceed in forma
21 pauperis and does not otherwise comply with Rule 24(a)(1) of the
22 Federal Rules of Appellate Procedure. Accordingly, Petitioner's
23 request to proceed in forma pauperis (**Ct. Rec. 20**) is **DENIED.**

24 Based on the foregoing, **IT IS HEREBY ORDERED** as follows:

25 1. Petitioner's Request for Certificate of Appealability (**Ct.**
26 **Rec. 19**) is **DENIED.**

1 2. Petitioner's request to proceed in forma pauperis (**Ct. Rec.**
2 **20)** is **DENIED**.

3 **IT IS SO ORDERED.** The District Court Executive is directed to
4 enter this order and furnish copies to Petitioner and counsel.

5 **DATED** this 21st day of December, 2009.

6
7 S/Fred Van Sickle
8 _____
9 Fred Van Sickle
10 Senior United States District Judge