

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VICTOR ANTHONY ORTEGA,

Petitioner,

vs.

M. ELIOT SPEARMAN, Warden, High  
Desert State Prison,

Respondent.

No. 2:13-cv-01913-JKS

ORDER

[Re: Motion at Docket No. 46]

This Court denied Victor Anthony Ortega, a state prisoner now proceeding *pro se*, habeas relief on June 15, 2017. Docket Nos. 41, 42. The Court granted a certificate of appealability as to his claim that trial counsel was ineffective for failing to obtain forensic expert evidence. *Id.* Ortega timely filed a notice of appeal, dated June 23, 2017, which was processed to the Ninth Circuit Court of Appeals. Docket Nos. 43, 44. At Docket No. 46, Ortega now moves to proceed in forma pauperis (“IFP”) on appeal.

Although Ortega’s appeal is currently pending before the Ninth Circuit, “[t]he decision to allow an appeal to proceed in forma pauperis remains within the jurisdiction of the trial court after the filing of an appeal.” *Zambrano v. Gipson*, No. LA CV 15-01794, 2016 WL 4040649, at \*1 (C.D. Cal. July 6, 2016) (citation omitted). A person may be granted permission to proceed in forma pauperis if the person “submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that this provision applies to all actions filed in forma pauperis, not

just prisoner actions). “[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some particularity, definiteness and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (quoting *Jefferson v. United States*, 277 F.2d 823, 725 (9th Cir. 1960)).

In support of his application, Ortega submits a declaration and account statement indicating that he has no assets or income. Ortega is thus within the parameters necessary to grant an IFP application. Accordingly, his application to proceed on appeal without the payment of a filing fee is granted.

**IT IS THEREFORE ORDERED THAT** the Motion for Leave to Proceed on Appeal in Forma Pauperis at Docket No. 46 is **GRANTED**.

Dated: August 2, 2017.

/s/James K. Singleton, Jr.  
JAMES K. SINGLETON, JR.  
Senior United States District Judge