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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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| <p>CHRISTOPHER ADAME,</p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>JERRY BROWN, Attorney General of the State of California; MATTHEW CATE, Secretary, California Department of Corrections and Rehabilitation,</p> <p style="text-align: right;">Respondent.</p> | <p>CASE NO. 08-CV-0787 H (CAB)</p> <p>ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS AND DENYING APPLICATION FOR CERTIFICATE OF APPEALABILITY</p> |
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On April 30, 2008, Christopher Adame (“Petitioner”), a state prisoner proceeding pro se, filed a Petition for a writ of habeas corpus challenging his conviction and sentence pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) On April 21, 2009, the Court issued an order adopting the Magistrate Judge’s Report and Recommendations and denying the Petition. (Doc. No. 12.) On May 20, 2009, Petitioner filed a notice of appeal along with an application for a certificate of appealability. (Doc. Nos. 16, 17.) Petitioner has also filed a motion for leave to appeal in forma pauperis. (Doc. No. 14.)

I. Motion to Appeal in Forma Pauperis

Under 28 U.S.C. § 1915(a), the Court may authorize the appeal of an action without payment of the filing fee if the party submits an affidavit demonstrating his inability to pay the fee. See also Fed. R. App.P.24(a)(1) (providing for appeal IFP motion to be filed in the district

1 court). The motion for IFP on appeal must include a statement of all assets the prisoner
2 possesses. 28 U.S.C. § 1915(a).

3 In this case, Petitioner has submitted an affidavit declaring that he is unable to pay the
4 required fee, which is \$455.00. (Doc. No. 14, 15.) Petitioner’s trust account statement
5 indicates that it contains \$36.00. (Id.) Over the past six months, the average monthly deposits
6 to Petitioner’s account were \$13.33, and the average monthly balance was \$5.38. (Id.) Based
7 on these facts, the Court concludes that Petitioner has shown an inability to pay the filing fee.
8 The Court therefore grants Petitioner’s request to appeal in forma pauperis.

9 **II. Request for Certificate of Appealability**

10 Under Federal Rule of Appellate Procedure 22, “In a habeas corpus proceeding in
11 which the detention complained of arises from process issued by a state court, . . . the applicant
12 cannot take an appeal unless a circuit justice or s circuit or district judge issues a certificate of
13 appealability under 28 U.S.C. § 2253(c).” Fed. R. App. P. 22(b)(1). The habeas statute
14 provides that a certificate of appealability may issue only if the petitioner makes a “substantial
15 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where, as here, the
16 district court has rejected the petitioner’s constitutional claims on the merits, the petitioner
17 “must demonstrate that reasonable jurists would find the district court’s assessment of the
18 constitutional claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).

19 Here, Petitioner’s application for a certificate of appealability raises the same arguments
20 already rejected by the Court in denying the Petition. Accordingly, for the same reasons
21 expressed in the Court’s order denying Petitioner’s Petition, the Court concludes that Petitioner
22 has failed to make a substantial showing of the denial of a constitutional right.

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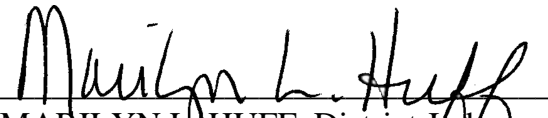
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Conclusion

Accordingly, the Court grants Petitioner's motion to appeal in forma pauperis and denies Petitioner's request for a certificate of appealability.

IT IS SO ORDERED.

DATED: June 24, 2009



MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT