

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 21-cv-60846-BLOOM**

JONATHAN GALLO,

Petitioner,

v.

FLORIDA DEPARTMENT  
OF CORRECTIONS,

Respondent.

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**ORDER ON MOTION TO PROCEED *IN FORMA PAUPERIS* ON APPEAL**

**THIS CAUSE** is before the Court upon a *pro se* Petitioner Jonathan Gallo's ("Petitioner") Motion to Proceed *In Forma Pauperis* on Appeal, ECF No. [8] ("Motion"). The Court has reviewed the Motion, the record in this case, the applicable law, and is otherwise fully advised. For the reasons set forth below, the Motion is denied.

On April 21, 2021, the Court dismissed Petitioner's Amended Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, ECF No. [1] ("Petition"), for lack of jurisdiction as an unauthorized successive § 2254 petition. ECF No. [3]; *see* Rules Governing § 2254 Cases, Rule 9 ("Before presenting a second or successive petition, the petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the petition as required by 28 U.S.C. § 2244(b)(3) and (4).").

Petitioner now seeks to appeal the Court's Order of Dismissal, ECF No. [3], and proceed *in forma pauperis* on appeal. "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "A party demonstrates good faith by seeking appellate review of any issue that is not frivolous when examined under an

objective standard.” *Ghee v. Retailers Nat’l Bank*, 271 F. App’x 858, 859 (11th Cir. 2008) (per curiam). An appeal filed *in forma pauperis* is frivolous if “it appears that the [litigant] has little to no chance of success[,]” meaning that the “factual allegations are clearly baseless or that the legal theories are indisputably meritless.” *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir.1993) (per curiam) (alterations added).

Here, the Petition was indeed successive and without authorization from the Eleventh Circuit. ECF No. [3] at 1 (citing *Gallo v. Jones*, No. 15-cv-62684-JAL, ECF No. [19] (S.D. Fla. Dec. 21, 2015) (adopting Report and Recommendation that the petition be dismissed as time barred and determining that a certificate of appealability shall not issue)). Further, Petitioner has not stated what issues he intends to present on appeal as required by Federal Rule of Appellate Procedure 24(a)(1)(C). It is therefore clear that this appeal has little or no chance of success. As such, the Court must therefore certify that the Motion is not taken in good faith.

Accordingly, it is **ORDERED AND ADJUDGED** that Petitioner’s Motion, ECF No. [7], is **DENIED** without prejudice.

**DONE AND ORDERED** in Chambers at Miami, Florida, on July 19, 2021.



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**BETH BLOOM**  
**UNITED STATES DISTRICT JUDGE**

Copies to:

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