

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-cv-24105-GAYLES/WHITE

ALBERIC ISRAEL, *on behalf of A.I. and  
E.I., minor children,*  
Plaintiff,

v.

CITY OF NORTH MIAMI BEACH, et al.,  
Defendants.

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**ORDER**

THIS CAUSE comes before the Court on the Plaintiff's Motion for Certificate of Appealability [ECF No. 12] and Motion for Leave to Appeal *in forma pauperis* [ECF No. 13]. The Court has reviewed the motions, the record in this case, and the applicable law and is otherwise fully advised in the premises.

As to the Motion for Certificate of Appealability, the Plaintiff's claims in this action arose under 42 U.S.C. § 1983, which is not an action in which a certificate of appealability is required. *See Anyanwutaku v. Moore*, 151 F.3d 1053, 1057 (D.C. Cir. 1998) ("The AEDPA's certificate of appealability requirement applies only to appeals from 'the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court.' 28 U.S.C. § 2253(c)(1)(A), and 'the final order in a proceeding under section 2255,' *id.* § 2253(c)(1)(B), not to section 1983 actions."). The motion is therefore denied.

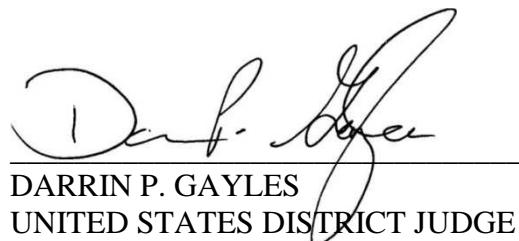
As to the Motion for Leave to Appeal *in forma pauperis*, an appeal cannot be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). Good faith must be judged by an objective standard. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). A party does not proceed in good faith when he seeks to advance

a frivolous claim or argument. *See id.* at 445-46. An action is frivolous and, thus, not brought in good faith, if it is “without arguable merit either in law or fact.” *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002). And a claim is “arguable” for these purposes if it is “capable of being convincingly argued.” *Sun v. Forrester*, 939 F.2d 924, 925 (11th Cir. 1991) (per curiam) (citation omitted).

In its Order dismissing the Plaintiff’s Complaint [ECF No. 8], this Court adopted the Report and Recommendation of Magistrate Judge White that the Plaintiff’s Section 1983 claims, which arose from an arrest that occurred in November 2005, were barred by the applicable statute of limitations and thus had no arguable basis in law or fact. Based thereon, the Court concludes that there are no arguable, nonfrivolous issues to raise on appeal, and an appeal would not be taken in good faith. This motion is also denied. It is therefore

**ORDERED AND ADJUDGED** that the Plaintiff’s Motion for a Certificate of Appealability [ECF No. 12] is **DENIED** and the Plaintiff’s Motion for Leave to Appeal *in forma pauperis* [ECF No. 13] is **DENIED**.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 30th day of January, 2017.



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DARRIN P. GAYLES  
UNITED STATES DISTRICT JUDGE