

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION**

**ERIC R. GABE,**

**Movant,**

v. **408CV156  
405CR281**

**UNITED STATES OF AMERICA,**

**Respondent.**

**ORDER**

Habeas movant Eric R. Gabe appeals this Court's order adopting the magistrate judge's Report and recommendation (R&R) and denying his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Doc. # 8. He has filed a motion to appeal *in forma pauperis* (IFP) which this Court construes as both a notice of appeal (NOA) and an application for a certificate of appealability (COA). Doc. ## 23, 24; *see Edwards v. U.S.*, 114 F.3d 1083, 1084 (11th Cir. 1997) (appeal notice is treated as implied COA application).<sup>1</sup>

Gabe's IFP motion is examined under the pre-PLRA version of 28 U.S.C. § 1915. *Davis v. Fechtel*, 150 F.3d 486, 490 (5th Cir. 1998). To obtain IFP status, he must show that he is raising at least one appellate issue that could be supposed to have some arguable merit. *See Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

<sup>1</sup> Gabe previously moved the Court for a COA and IFP status, but because they were sought before the Court had issued an Order adopting the magistrate judge's R&R, the Court denied both as prematurely filed. *See* doc. # 19. The Court has since entered a final Order adopting the R&R, and Gabe has filed a new IFP motion and NOA, which are now before the Court.. Doc. ## 23, 24.

To obtain a COA, a § 2255 movant must show not only that one or more of the claims he has raised presents a substantial constitutional issue, but also that there is a substantial issue regarding the correctness of the procedural ground on which the petition was denied. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). A "substantial question" about a procedural ruling means that the correctness of it under the law as it now stands is debatable among jurists of reason. 28 U.S.C.A. § 2253(c)(2); *Gordon v. Sec'y Dep't of Corr.*, 479 F.3d 1299, 1300 (11th Cir. 2007).

Gabe has not pointed to any error made by this Court in its decision or identified any issue for appeal. Nor does the Court, upon its own review, see any non-frivolous issue to be raised on appeal. In his R&R, the magistrate judge addressed Gabe's numerous ineffective assistance of counsel (IAC) allegations and found them all to be without merit. *See* doc. # 7 at 6 ("Several of Gabe's claims of [IAC] are entirely unsupported."); *id.* at 10 (IAC claims related to *Batson* challenges were "utterly unsupported"); *id.* at 12-16 (finding remaining claims do not "come[] close to stating a claim for [IAC]" and have "no merit").

Gabe has failed to satisfy the IFP/COA standards. His IFP motion and COA application are **DENIED**. Doc. ## 23, 24. The Clerk is **INSTRUCTED** to transmit Gabe's implied NOA, doc. # 23, to the Eleventh Circuit Court of Appeals.

This 13th day of April 2009.



**B. AVANT EDENFIELD, JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA**