

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

JACK D. FRAME,)	
)	
Petitioner,)	
)	
v.)	Case No. 09-cv-1343
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

O P I N I O N and O R D E R

Before the Court are the Notice of Appeal, which the Court construes as a Motion for Certificate of Appealability (Doc. 7) and the Motion to Allow Previous Filing Fee to be used in Appeal (Doc. 8). Both Motions are DENIED.

On October 8, 2009, Petitioner filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner challenged his federal conviction and sentence and his Petition was accordingly converted to a Motion pursuant to 28 U.S.C. § 2255. The Motion was then denied as being without merit and this matter was dismissed on October 2, 2009. Petitioner filed a Federal Rule of Civil Procedure 60(b) Motion on June 1, 2010. That Motion was denied on June 7, 2010. Petitioner now seeks leave to appeal and also seeks to forego payment of the filing fee, urging the Court to apply a previously paid filing fee in an appeal that was voluntarily withdrawn.

Title 28 U.S.C. § 2253 provides that an appeal may not be taken unless a certificate of appealability is issued. Such a certificate may issue “only if the

applicant has made a substantial showing of the denial of a constitutional right.”
Id. Petitioner has made no such showing. Petitioner’s claims are entirely without merit. There also is no rule of law which would allow the application of a filing fee paid in a previously dismissed appeal to apply to a later filed and unrelated appeal. As such, both Motions are hereby DENIED.

Entered this 17th day of August, 2010

s/ Joe B. McDade

JOE BILLY MCDADE
Senior United States District Judge