

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

U.S. ex rel. Everardo T. Alegria	)	
(B-01085),	)	
Petitioner,	)	Case No: 14 C 5451
	)	Court of Appeals No. 15-2196
v.	)	
	)	Judge Philip G. Reinhard
Tarry Williams, et al.,	)	
	)	
Respondents.	)	

**ORDER**

The petitioner's motion for leave to appeal *in forma pauperis* [53] is denied. The court certifies that the appeal is not taken in good faith and orders petitioner to pay the appellate fee of \$505 within fourteen days or the Court of Appeals may dismiss his appeal for want of prosecution. Petitioner's motion to appoint counsel [54] is denied without prejudice to him seeking appointment of counsel before the Seventh Circuit. The clerk is directed to send a copy of this order to the United States Court of Appeals for the Seventh Circuit.

**STATEMENT-OPINION**

*Pro se* petitioner Everardo T. Alegria previously brought a petition for post conviction relief pursuant to 28 U.S.C. § 2254 [27], which this court denied as untimely [45]. It also declined to issue a certificate of appealability. Petitioner filed a motion to reconsider [48], which the court denied on May 7, 2015 [49]. On June 3, 2015, petitioner filed a notice of appeal [51], and now seeks leave to proceed *in forma pauperis* on appeal. [53].

The court denies the motion for leave to appeal *in forma pauperis* because the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3). As discussed in the court's orders denying the petition [48] and denying the motion to reconsider [49], the denial of Alegria's petition was not a close question. As the petition was clearly untimely, the result is that the appeal is frivolous. Thus, the court is required to deny the *in forma pauperis* request. *See Hains v. Washington*, 131 F.3d 1248, 1250 (7th Cir. 1997) (*per curiam*).

Under the rules of the United States Court of Appeals for the Seventh Circuit, if the district court certifies that an appeal is not taken in good faith, the appellant cannot prosecute the appeal *in forma pauperis*, but rather must pay the appellate fees in full for the appeal to go forward.

Consequently, plaintiff must pay the full \$505 appellate fee within fourteen days or the Court of Appeals may dismiss his appeal for want of prosecution. *See Evans v. Illinois Dep't of Corr.*, 150 F.3d 810, 812 (7th Cir. 1998). If the petitioner wishes to contest this court's finding that the appeal is not taken in good faith, he must file a motion with the Court of Appeals seeking review of this court's certification within thirty days of service of this order. *See Fed. R. App. P. 24(a)(5)*.

In sum, petitioner's motion for leave to appeal *in forma pauperis* [53] is denied. Petitioner is ordered to remit to the Clerk of the Court the \$505 appellate fee within fourteen days of the date of this order. If the petitioner fails to comply with this order, the Court of Appeals may dismiss his appeal. The petitioner is responsible for ensuring payment of the filing fees as directed by this order. The petitioner is under a continuing obligation to inform the clerk of this court in writing of any change of address within seven days.

Payment shall be sent to the Clerk, United States District Court, 219 S. Dearborn St., Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor. Payment should clearly identify the petitioner's name, as well as the district court and appellate court case numbers assigned to this action.

Finally, petitioner's motion to appoint counsel [54] is denied as this court has already denied his petition. This denial is without prejudice to him seeking appointment of counsel on appeal before the Seventh Circuit, which is not a question for this court.

The clerk is directed to send a copy of this order to the United States Court of Appeals for the Seventh Circuit.

Date: 6/10/2015

ENTER:



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United States District Court Judge

*Notices mailed by Judicial Staff. (LC)*