

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MARCUS BRADLEY,

Petitioner,

v.

DONALD GAETZ,

Respondent.

No. 05-cv-0712-DRH

MEMORANDUM and ORDER

HERNDON, Chief Judge:

On March 13, 2009, the Court denied and dismissed with prejudice Bradley's 28 U.S.C. § 2254 petition (Doc. 18). On March 16, 2009, the Clerk of the Court entered judgment reflecting the same (Doc. 19).¹ Now before the Court is Bradley's June 1, 2009, motion to proceed in forma pauperis on appeal which he erroneously filed with the Seventh Circuit Court of Appeals (Doc. 28).

As discussed in the Court's previous Order denying Bradley's request for a certificate of appealability, the Court concluded that Bradley has failed to make a substantial showing of the denial of a constitutional right so as to warrant a grant of a certificate of appealability (Doc. 21). However, the standard governing the issuance of a certificate of appealability is more demanding than the standard for determining whether an appeal is in good faith for purposes of proceeding in forma

¹The Court approved the Judgment on March 13, 2009. However, it was not entered into the Court's electronic filing system until March 16, 2009.

pauperis on appeal. **See Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000).** To conclude that an appeal is in good faith, “a court need only find that a reasonable person could suppose that the appeal has some merit.” **Id. at 632 (citing Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000)).** Thus, an unsuccessful movant for relief may proceed in forma pauperis on appeal even after a district court has denied issuance of a certificate of appealability. **See id. (concluding that an appeal can be taken in good faith even though a certificate of appealability has been denied); Branch, 2004 WL 2033056, at *4 (same).**

In the instant case, the Court believes that, although Bradley’s asserted grounds for appeal are meritless, they have been raised in good faith. Therefore, the Court will not certify that Bradley’s appeal is taken in bad faith. Thus, the Court **GRANTS** Bradley’s motion to proceed in forma pauperis on appeal (Doc. 28).

IT IS SO ORDERED.

Signed this 8th day of June, 2009.

/s/ David R. Herndon

**Chief Judge
United States District Court**