

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOHN L. TOLLIVER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 07-cv-525-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on Petitioner John L. Tolliver's Motion for Leave to Appeal in forma pauperis (Doc. 28). Tolliver is attempting to appeal the Court's denial of his Motion for Discovery (Doc. 18) and the Court's denial of his Motion for Reconsideration of that Order (Doc. 26).

A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000).

Pursuant to 28 U.S.C. 2255(d) an appeal may be taken on the order entered on the petition for habeas. However, the Court has not yet entered an order on Tolliver's petition. Tolliver cites no authority under which he is able to appeal an interlocutory order in a habeas case, and the Court is aware of none. As such, Tolliver's appeal is legally frivolous. Therefore, the Court **DENIES** his Motion for Leave to Appeal in forma pauperis (Doc. 28).

IT IS SO ORDERED.

DATED: March 23, 2009

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE