

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DOUGLAS L. NITCH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 08-cv-77-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on the Motion for Leave to Appeal *in forma pauperis* (Doc. 15) filed by Petitioner Douglas L. Nitch. 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). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

The Court is satisfied from Nitch's affidavit that he is indigent. Furthermore, the Court does not believe that this action is frivolous or malicious. Therefore, the Court **GRANTS** the motion to proceed on appeal *in forma pauperis* without prepayment of fees and costs (Doc.15).

IT IS SO ORDERED.

DATED: June 10, 2009

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