

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

COREY LOUIS HINES,

Petitioner,

v.

DAVID HAYES, et al.,

Respondents.

No. 10-543-DRH

ORDER

HERNDON, Chief Judge:

This cause is before the Court on Petitioner's motion for leave to appeal *in forma pauperis* (Doc. 17).

"An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." **28 U.S.C. § 1915(a)(3)**. 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." ***Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000) (citing *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000))**. ***See also Moran v. Sondalle*, 218 F.3d 647, 651 (7th Cir. 2000) ("because these appeals are not in good faith for purposes of § 1915(a)(3), we revoke the orders permitting the appellants to proceed in forma pauperis"); *Tolefree v. Cudehy*, 49 F.3d 1243, 1244 (7th Cir. 1995) ("[T]he granting of leave to appeal in forma pauperis from the dismissal of a frivolous suit is presumptively erroneous and indeed self-contradictory.")**.

This action was summarily dismissed pursuant to **28 U.S.C. § 2254 Rule 4.**¹ Implicit in such a dismissal is a finding that the petition for writ of habeas corpus was legally frivolous, as that term is used in **28 U.S.C. § 1915(e)(2)**. See **Johnson v. Gramley, 929 F.2d 350, 351 (7th Cir. 1991)**. Specifically, the instant petition “lacks an arguable basis either in fact or law.” **Neitzke v. Williams, 490 U.S. 319, 325 (1989)**. This Court found that Petitioner’s claims were not appropriate for a habeas corpus proceeding and more properly characterized as a civil rights proceeding. When the underlying district court action is legally frivolous, any appeal from its summary dismissal is frivolous, too, and accordingly, leave to proceed *in forma pauperis* on appeal is **DENIED**. Petitioner shall tender the appellate filing and docketing fee of \$455 to the Clerk of Court in this District within **FIFTEEN (15) DAYS** of the date of entry of this Order, or he may reapply to the Seventh Circuit Court of Appeals for leave to proceed *in forma pauperis* on appeal.

IT IS SO ORDERED.

Signed this 8th day of December, 2010.

 David R. Herndon
2010.12.08
15:41:48 -06'00'

**Chief Judge
United States District Court**

¹ Although this is an action under **28 U.S.C. § 2241**, Rule 1(b) of the Rules Governing Section 2254 Cases in the United States District Courts give this Court the authority to apply those rules to other habeas corpus cases such as the in-state § 2241 habeas petition.