

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA**

WILLIE R. LEE,	)	
	)	
Petitioner,	)	
	)	
v.	)	CAUSE NO. 3:08-CV-80-TLS
	)	
SUPERINTENDENT, Indiana State Prison,	)	
	)	
Respondent.	)	

**OPINION AND ORDER**

Petitioner Willie R. Lee has filed a Motion for Leave to Appeal in Forma Pauperis [ECF No. 34] and a Motion for Certificate of Appealability [ECF No. 35].

Under 28 U.S.C. § 2253(c)(2), a district court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” Under this statute, a habeas petitioner must show “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks and citation omitted). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* “Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.” *Id.*

In his Motion for Certificate of Appealability, the Petitioner asserts that he “has made a substantial showing that his Habeas Corpus Petition [was] timely filed.” (ECF No. 35 at 1.) However, the Court finds that the Petitioner has not made the requisite showing. This Court reviewed this issue and concluded that his Petition was untimely. For the reasons stated in this Court’s Opinion and Order of July 12, 2010, and this Court’s Order of September 8, 2010, denying the Petitioner’s Motion to Alter or Amend Judgment, the Court concludes that the question raised by the Petitioner does not present a question that is debatable among jurists of reason. Consequently, the Court declines to issue a certificate of appealability and will deny the Petitioner’s Motion for Certificate of Appealability. Pursuant to Federal Rule of Appellate Procedure 22(b), when a district judge denies a certificate of appealability, the applicant for the writ may request issuance of the certificate by a circuit judge.

The Petitioner also seeks leave to proceed in forma pauperis on appeal. The Petitioner has submitted an affidavit regarding his financial condition in which he states that he is unable to pay the required fees (ECF No. 2 at 1), and he has submitted certified copies of his prisoner account (ECF No. 2 at 2–3 & ECF No. 34 at 3–7). *See* 28 U.S.C. § 1915(a)(1) & (a)(2). These submissions show that the Petitioner is indigent. Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” Even after a district court has denied issuance of a certificate of appealability, an unsuccessful petitioner under § 2254 may proceed in forma pauperis on appeal. *Walker v. O’Brien*, 216 F.3d 626, 632 (7th Cir. 2000) (stating that a more liberal standard applies to a motion to proceed in forma pauperis on appeal). To find that an appeal is taken in good faith, the court must determine “that a reasonable person could suppose that the appeal has some merit.”

*Id.* Although the Court has declined to issue a certificate of appealability, the Court does not find that his request for appellate review is not taken in good faith. Accordingly, the Court will grant the Petitioner's Motion for Leave to Appeal in Forma Pauperis.

### **CONCLUSION**

For the foregoing reasons, the Court DENIES the Petitioner's Motion for Certificate of Appealability [ECF No. 35] but GRANTS the Petitioner's Motion for Leave to Appeal in Forma Pauperis [ECF No. 34].

SO ORDERED on October 15, 2010.

s/ Theresa L. Springmann  
THERESA L. SPRINGMANN  
UNITED STATES DISTRICT COURT  
FORT WAYNE DIVISION