

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT PADUCAH**

**RAYFORD E. POOLE**

**PETITIONER/APPELLANT**

**v.**

**CIVIL ACTION NO. 5:11CV-P81-R**

**PHILLIP PARKER**

**RESPONDENT/APPELLEE**

**MEMORANDUM AND ORDER**

Petitioner/Appellant Rayford E. Poole has filed a motion to proceed on appeal *in forma pauperis* (DN 16). The Sixth Circuit has held that the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915, does not apply to appeals of orders denying 28 U.S.C. § 2254 petitions. *Kincade v. Sparkman*, 117 F.3d 949, 951 (6th Cir. 1997). Rather, to appeal *in forma pauperis* in a § 2254 case, and thereby avoid the appellate filing fee, an appellant must seek permission from the district court under Federal Rule of Appellate Procedure 24(a). *Id.* at 952. Rule 24(a) provides that a party seeking pauper status on appeal must first file a motion in the district court, along with a supporting affidavit. Fed. R. App. P. 24(a)(1). However, Rule 24(a) also provides that if the district court certifies that an appeal would not be taken in good faith, or otherwise denies leave to appeal *in forma pauperis*, the appellant must file his motion to proceed *in forma pauperis* in the appellate court. *See* Fed. R. App. P. 24(a)(4)-(5).

By Memorandum Opinion entered September 2, 2011, the Court concluded that the petition was time-barred and determined that a certificate of appealability was not warranted (DN 13). Those same reasons cause this Court to certify that the appeal is not taken in good faith.

**IT IS THEREFORE ORDERED** that the motion to proceed on appeal *in forma pauperis* (DN 16) is **DENIED**.

Consequently, **Petitioner/Appellant must pay the full \$455 appellate filing fee or file a motion to proceed *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals within thirty (30) days after service of notice of this Order.**

Should Petitioner/Appellant choose to pay the fee, payment must be made payable to the **Clerk, U.S. District Court** and sent to Office of the Clerk, United States District Court, Western District of Kentucky, 601 West Broadway, Louisville, Kentucky 40202-2249. **Failure to comply with this Order may result in dismissal of the appeal.**

Date:

cc: Petitioner/Appellant, *pro se*  
Clerk, Sixth Circuit Court of Appeals (No. 11-6200)  
4413.005