UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DANIEL MOORE   CRIMINAL ACTION

VERSUS   NO: 14-1209

N. BURL CAIN, Warden,   SECTION: R(3)
Louisiana State Penitentiary

ORDER AND REASONS

Petitioner Daniel Moore moves the Court to permit him to proceed *in forma pauperis* on appeal.[1] Because Moore's appeal is not taken in good faith, the Court DENIES the motion.

I.   BACKGROUND

Moore is incarcerated at the Louisiana State Penitentiary in Angola, Louisiana. On May 14, 2014, Moore filed a petition for writ of *habeas corpus*.[2] Magistrate Judge Daniel Knowles determined that an evidentiary hearing was unnecessary, and recommended that Moore's petition for *habeas corpus* be denied and dismissed with prejudice as untimely.[3] This Court approved the Magistrate Judge's Report and Recommendation and adopted it as its opinion on December

---

[1]   R. Doc. 16.

[2]   R. Doc. 3.

[3]   R. Doc. 11. Specifically, Judge Knowles found that Moore's federal application for *habeas corpus* relief had to be filed no later than August 9, 2011 in order to be timely. Because Moore's federal application was not filed until May 14, 2014, Judge Knowles concluded that it was untimely.

2, 2014.[4] In addition, the Court denied Moore a certificate of appealability.[5] Moore now moves to proceed with his appeal *in forma pauperis.*

II. STANDARD

A plaintiff may proceed with an appeal *in forma pauperis* when he "submits an affidavit that includes a statement . . . that [he] is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). A district court has discretion in deciding whether to grant or deny a request to proceed *in forma pauperis. See Prows v. Kastner,* 842 F.2d 138, 140 (5th Cir. 1988); *Williams v. Estelle,* 681 F.2d 946, 947 (5th Cir. 1982). The district court must inquire as to whether the costs of appeal would cause an undue financial hardship. *Prows,* 842 F.2d at 140; *see also Walker v. Univ. of Tex. Med. Branch,* No. 1:08-CV-417, 2008 WL 4873733, at *1 (E.D. Tex. Oct. 30, 2008) ("The term 'undue financial hardship' is not defined and, therefore, is a flexible concept. However, a pragmatic rule of thumb contemplates that undue financial hardship results when prepayment of fees or costs would result in the applicant's inability to pay for the 'necessities of life.'") (quoting *Adkins v. E.I. DuPont de Nemours & Co.,* 335 U.S. 331, 339 (1948)). The court must also determine whether the appeal is taken in good

---

[4]   R. Doc. 13.

[5]   *Id.*

faith. 28 U.S.C. § 1915(3). "'Good faith' is demonstrated when a party seeks appellate review of any issue 'not frivolous.'" *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (quoting *Coppedge v. U.S.*, 369 U.S. 438, 445 (1962)).

III. DISCUSSION

Moore's motion to proceed *in forma pauperis* indicates that his current drawing account balance is $2.37, and his savings account balance is $36.00.[6] Moore indicates that he has no other assets.

Although Moore's motion to proceed *in forma pauperis* suggests his inability to pay fees related to his appeal, the Court denies his motion because his appeal is not taken in good faith. The Court, adopting the Magistrate Judge's Report and Recommendation, specifically found that Moore's federal application for *habeas corpus* relief was untimely. In his notice of appeal, Moore merely reiterates the claims he presented in his original application and does not seek appellate review of the timeliness determination for which his petition was denied.[7] Even if Moore indicated that he intended to appeal this issue, such an appeal is frivolous for the reasons stated in the Magistrate Judge's Report and Recommendation and the Court's order denying Moore a certificate of appealability.

---

[6]   R. Doc. 16.

[7]   *See* R. Doc. 15.

Accordingly, Moore's appeal is not taken in good faith and his *in forma pauperis* motion is denied.

IV. CONCLUSION

For the foregoing reasons, the Court DENIES petitioner's motion to proceed *in forma pauperis* on appeal.

New Orleans, Louisiana, this 15th day of December, 2014.

_____
SARAH S. VANCE
UNITED STATES DISTRICT JUDGE