

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

JAMES DAVID ROSS

CIVIL ACTION

VERSUS

NO. 16-2568

DARRELL VANNOY

SECTION "R" (1)

**ORDER AND REASONS**

Petitioner James David Ross moves the Court to permit him to proceed *in forma pauperis* on appeal.<sup>1</sup> Because Ross failed to state the specific issues he intends to raise on appeal and his arguments lack good faith, the Court DENIES petitioner's motion.

**I. BACKGROUND**

Ross is currently incarcerated at the Louisiana State Penitentiary in Angola, Louisiana. On August 25, 2010, Ross was convicted of simple robbery, possession of stolen property, and attempted false personation of a peace officer under Louisiana law.<sup>2</sup> On November 5, 2010, he was found to be a fourth offender and sentenced to a concurrent term of life imprisonment

---

<sup>1</sup> R. Doc. 17.

<sup>2</sup> R. Doc. 12 at 1.

with benefit of probation, parole, or suspension of sentence.<sup>3</sup> On April 14, 2016, Ross filed a petition for writ of *habeas corpus*.<sup>4</sup> Magistrate Judge Sally Shushan, having determined that petitioner was not entitled to an evidentiary hearing, recommended that Ross’s petition for *habeas corpus* be denied and dismissed with prejudice.<sup>5</sup> This Court approved the Magistrate Judge’s Report and Recommendation and adopted it as its opinion on September 16, 2016.<sup>6</sup> In addition, the Court denied Ross a certificate of appealability.<sup>7</sup> Ross now moves to proceed with his appeal *in forma pauperis*.

## II. LEGAL STANDARD

A claimant may proceed with an appeal *in forma pauperis* if he meets three requirements. First, the claimant must submit “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). The district court must determine whether the costs of appeal would cause an undue financial hardship. *See Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir. 1998). Second, the claimant must

---

<sup>3</sup> *Id.*

<sup>4</sup> R. Doc. 3.

<sup>5</sup> R. Doc. 12.

<sup>6</sup> R. Doc. 14.

<sup>7</sup> *Id.*

provide the court with an affidavit that “states the issues that the party intends to present on appeal.” Fed. R. App. P. 24(a)(1)(C); *accord* 28 U.S.C. § 1915(a)(1) (“Such affidavit shall state the nature of the . . . appeal and affiant’s belief that the person is entitled to redress.”). Third, the claimant’s appeal must be “taken in good faith.” 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(4)(B). “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) (citing *Coppedge v. United States*, 369 U.S. 438, 445 (1962)). Good faith “does not require that probable success be shown,” but rather “is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous).” *United States v. Arroyo-Jurado*, 477 F. App’x 150, 151 (5th Cir. 2012). “A complaint is frivolous if it lacks an arguable basis either in law or in fact.” *Kingery v. Hale*, 73 F. App’x 755, 755 (5th Cir. 2003).

### III. DISCUSSION

Ross’s motion to proceed *in forma pauperis* indicates that his current inmate account balance is \$4.98 and that he has no other assets.<sup>8</sup> Ross’s motion to proceed *in forma pauperis* suggests his inability to pay fees related to his appeal. Nevertheless, his motion must be denied because he has not

---

<sup>8</sup> R. Doc. 17.

indicated the issues he intends to pursue on appeal as required by Federal Rule of Appellate Procedure 24(a)(1)(C) and 28 U.S.C. § 1915(a)(1).<sup>9</sup> Without such specification, Ross's *in forma pauperis* motion must be denied. *See McQueen v. Evans*, No. 95–50474, 1995 WL 17797616, at \*2 (5th Cir. Oct. 11, 1995) (per curiam) (failure to present issue for appeal in an *in forma pauperis* motion constitutes abandonment of that issue); *see also McKinsey v. Cain*, No. 09–7729, 2011 WL 2945812, at \*1 (E.D. La. July 15, 2011) (denying *in forma pauperis* motion that failed to specify the issues to be raised on appeal).

Moreover, assuming that Ross intends to raise on appeal all of the arguments in his petition, such an appeal is frivolous. An appeal may not be taken *in forma pauperis* if it is not in good faith. Ross's appeal does not have an arguable basis either in law or in fact and is therefore frivolous. Ross argues in his petition that his counsel was ineffective, but as the Magistrate Judge correctly pointed out in her Report and Recommendation, Ross failed to introduce any evidence supporting his claims.<sup>10</sup> Additionally, petitioner's argument that he is entitled to an evidentiary hearing to obtain the evidence to support his claims clearly lacks merit. *See, e.g., Cullen v. Pinholster*, 563

---

<sup>9</sup> R. Doc. 16; R. Doc. 17.

<sup>10</sup> R. Doc. 12 at 11-14.

U.S. 170 (2011). Because Ross's claims do not have an arguable basis in law or in fact, his appeal is frivolous.

#### IV. CONCLUSION

For the foregoing reasons, petitioner's motion for leave to appeal *in forma pauperis* is DENIED.

New Orleans, Louisiana, this   26th   day of October, 2016.

  
-----  
SARAH S. VANCE  
UNITED STATES DISTRICT JUDGE