

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CLEVELAND LAWSON

CIVIL ACTION

VERSUS

NO. 16-16909

DARRYL VANNOY

SECTION "R" (4)

ORDER

Petitioner Cleveland Lawson requests a certificate of appealability¹ and moves the Court to permit him to proceed *in forma pauperis* on appeal.² The Court denied a certificate of appealability in its October 24, 2017 order denying habeas relief.³ Because Lawson's arguments lack good faith, the Court also denies the motion to proceed *in forma pauperis*.

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). Based on this information, 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).

¹ R. Doc. 18.

² R. Doc. 19.

³ R. Doc. 15.

Second, the claimant must 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).

Lawson’s motion to proceed *in forma pauperis* indicates that his inmate drawing account has a balance of \$18.06, his inmate savings account has a balance of \$236.06, and he has no other assets.⁴ Although Lawson’s motion suggests his inability to pay fees related to his appeal, his motion must be denied because the arguments he intends to raise on appeal do not

⁴ R. Doc. 19.

have an arguable basis either in law or in fact and are therefore frivolous. As explained in the Court's order denying habeas relief, Lawson's petition must be denied because it is time-barred under the Antiterrorism and Effective Death Penalty Act.⁵ In his application for a certificate of appealability, Lawson simply rehashes the same arguments he made before the Magistrate Judge and this Court.⁶ Lawson fails to address the statute of limitations issue in his notice of appeal, his request for a certificate of appealability, or his motion to proceed in forma pauperis.

For the foregoing reasons, Lawson's motion for leave to appeal *in forma pauperis* is DENIED. As stated in the Court's October 24, 2017 order, the Court DENIES a certificate of appealability.

New Orleans, Louisiana, this 20th day of November, 2017.



SARAH S. VANCE
UNITED STATES DISTRICT JUDGE

⁵ R. Doc. 15.

⁶ R. Doc. 18.