

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

RHINE REYNOLDS (#525533)

CIVIL ACTION

VERSUS

BURL CAIN, WARDEN,
JAMES D. CALDWELL, JR., and
RICHARD J. WARD

NO. 13-0041-SDD-RLB

ORDER

This matter comes before the Court on the Petitioner's *Motion for Issuance of Certificate of Appealability*¹ and *Motion to Proceed In Forma Pauperis on Appeal*.² For the following reasons, Petitioner's *Motions* shall be denied as premature.

On June 2, 2015, this Court entered a *Ruling*³ adopting the *Report and Recommendation*⁴ of Magistrate Judge Richard L. Bourgeois, Jr., dated April 28, 2015, and denying the Petitioner's pending *Motion for Relief From a Final Judgment*.⁵ Subsequently, however, upon a determination that the Petitioner had not received a service copy of the Magistrate Judge's *Report and Recommendation* and had not been afforded an opportunity to file an Objection thereto in accordance with 28 U.S.C. § 636(b)(1), the Court entered an *Order*⁶ on July 6, 2015, vacating its June 2, 2015 *Ruling*, and directing the Clerk of Court

¹ Rec. Doc. 39.

² Rec. Doc. 38.

³ Rec. Doc. 35.

⁴ Rec. Doc. 33.

⁵ Rec. Doc. 31.

⁶ Rec. Doc. 40.

to re-send a copy of the Magistrate Judge's *Report and Recommendation* to the Petitioner so that he could be afforded "an opportunity to file an objection thereto." In the interim, the Petitioner filed the instant *Motion for Issuance of Certificate of Appealability*⁷ and *Motion to Proceed In Forma Pauperis on Appeal*⁸. These Motions, however, now relate to a *Ruling of Dismissal* that has been vacated and withdrawn and so is without legal effect. Accordingly, it is appropriate that the Motions be denied as premature and without prejudice to the re-filing of these Motions by the Petitioner when the Court enters a final appealable *Ruling* in connection with the Petitioner's pending *Motion for Relief From a Final Judgment*⁹. Accordingly,

IT IS HEREBY ORDERED that the Petitioner's *Motion for Issuance of Certificate of Appealability*¹⁰ and *Motion to Proceed In Forma Pauperis on Appeal*¹¹ are **DENIED AS PREMATURE**, without prejudice to re-filing when the Court enters a final appealable *Ruling* in connection with the Petitioner's pending *Motion for Relief From a Final Judgment*.¹²

Baton Rouge, Louisiana the 15 day of July, 2015.



**SHELLY D. DICK, DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA**

⁷ Rec. Doc. 39.

⁸ Rec. Doc. 38.

⁹ Rec. Doc. 31.

¹⁰ Rec. Doc. 39.

¹¹ Rec. Doc. 38.

¹² Rec. Doc. 31.