

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

MITCHELL WILLIAMS

CIVIL ACTION

VERSUS

16-93-SDD-EWD

LOUISIANA, ET.AL.

**RULING**

This matter is before the Court on the Defendant's *Notice of Appeal*<sup>1</sup> and *Motion for Leave to Appeal In Forma Pauperis*.<sup>2</sup>

On August 10, 2016, the Court adopted the *Report and Recommendations*<sup>3</sup> issued by U.S. Magistrate Judge Wilder-Doomes.<sup>4</sup> On August 10, 2016, the Court also entered a *Judgment*<sup>5</sup> dismissing the matter with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B). Defendant then filed a *Notice of Appeal*<sup>6</sup> and *Motion for Leave to Appeal In Forma Pauperis*<sup>7</sup> now before the Court.

To the extent that the Defendant's *Notice of Appeal* may be characterized as a request for a certificate of appealability, 28 U.S.C. § 2253(c) provides that, "[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to

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<sup>1</sup> Rec. Doc. No. 19.

<sup>2</sup> Rec. Doc. No. 20.

<sup>3</sup> Rec. Doc. No. 13.

<sup>4</sup> Rec. Doc. No. 17.

<sup>5</sup> Rec. Doc. No. 18.

<sup>6</sup> Rec. Doc. No. 19.

<sup>7</sup> Rec. Doc. No. 20.

the court of appeals from ... the final order in a proceeding under section 2255.” Under this statute, in order to obtain a certificate of appealability, the Defendant must make a substantial showing of the denial of a federal right.<sup>8</sup> In addition, he must also show that the issues presented are debatable among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are sufficient to warrant encouragement to proceed further.<sup>9</sup> Upon a review of this matter, the Court finds that the Defendant has not made the requisite substantial showing of the denial of a federal right. Moreover, the Court does not find that the issues in this case are likely to be debatable among jurists of reason such that a court could resolve this matter differently. Thus, the Defendant's request for a Certificate of Appealability shall be denied.

Further, the Defendant seeks leave to proceed *in forma pauperis* in connection with his appeal. However, as noted, 28 U.S.C. § 2253(c) provides that “an appeal may not be taken” in the absence of the granting by the Court of a certificate of appealability. In light of the denial by this Court of the Defendant's request for a certificate of appealability, the motion to appeal *in forma pauperis* must also be denied.

Finally, and in the alternative, because the Court finds that the Defendant has not demonstrated a non-frivolous issue for appeal, the Court concludes that the appeal is not taken in good faith and that the Defendant is, therefore, not authorized to proceed *in forma pauperis* in connection therewith.<sup>10</sup> Accordingly,

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<sup>8</sup> 28 U.S.C. § 2253(c)(2).

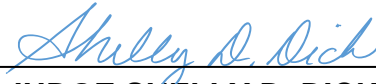
<sup>9</sup> *Barefoot v. Estelle*, 463 U.S. 880, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983); *Sawyers v. Collins*, 986 F.2d 1493 (5th Cir.1993), *cert. denied*, 508 U.S. 933, 113 S.Ct. 2405, 124 L.Ed.2d 300 (1993).

<sup>10</sup> See Fed. R.App. P. 24(a); *United States v. Marion*, 79 Fed.Appx. 46 (5th Cir. 2003).

**IT IS HEREBY ORDERED** that the Defendant's *Notice of Appeal*,<sup>11</sup> to the extent that it may be interpreted as a request for a certificate of appealability, is DENIED.

**IT IS FURTHER ORDERED** that the Defendant's *Motion for Leave to Appeal in Forma Pauperis*<sup>12</sup> is also DENIED.

Signed in Baton Rouge, Louisiana on August 1, 2017.



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**JUDGE SHELLY D. DICK  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

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<sup>11</sup> Rec. Doc. No. 19.

<sup>12</sup> Rec. Doc. No. 20.