

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JOHN WIECZOREK,

Petitioner,

v.

Case Number: 08-12334-BC
Honorable Thomas L. Ludington

SHIRLEE A. HARRY,

Respondent.

**ORDER DENYING PETITIONER'S MOTION
FOR LEAVE TO APPEAL IN FORMA PAUPERIS**

On August 15, 2011, the Court issued an opinion and order denying Petitioner's application for a writ of habeas corpus. ECF No. 18. Under Rule 11 of the Rules Governing § 2254 Proceedings, the Court "must issue or deny a certificate of appealability when it enters a final order." Accordingly, in the opinion and order dismissing the petition, the Court concluded that a certificate of appealability was not warranted because reasonable jurists would not debate the Court's assessment of Petitioner's claims nor conclude that the claims deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

On September 6, 2011, Petitioner filed a motion to proceed in forma pauperis on appeal, requesting that the Court reconsider its decision declining to issue a certificate of appealability on the claims presented in his petition or leave to appeal in forma pauperis.¹ ECF No. 21. An appeal may be taken in forma pauperis if the appeal is taken in "good faith." 28 U.S.C. § 1915(a). "Good faith" requires a showing that the issues are arguable on the merits and are, therefore, not frivolous;

¹ Under the Eastern District of Michigan's Local Rules, motions for reconsideration must be filed "within 14 days after entry of the judgment or order." E.D. Mich. L.R. 7.1(h)(1). Accordingly, Petitioner's motion is untimely.

it does not require a showing of probable success. *Harkins v. Roberts*, 935 F. Supp. 871, 873 (S.D. Miss. 1996) (quoting *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983)). “If the district court can discern the existence of any nonfrivolous issue on appeal, the movant’s petition to appeal in forma pauperis must be granted.” *Harkins*, 935 F. Supp. at 873. For the reasons stated in the Court’s opinion and order of August 15, 2011, the Court does not discern a nonfrivolous issue in this case and, thus, an appeal cannot be taken in good faith.

Accordingly, it is that Petitioner’s application to proceed in forma pauperis on appeal (ECF No. 21) is **DENIED**.

s/Thomas L. Ludington _____
THOMAS L. LUDINGTON
United States District Judge

Dated: September 26, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and upon John Wiczorek, #252051, at Newberry Correctional Facility, 3001 Newberry Avenue, Newberry, MI 49868 first class U.S. mail on September 26, 2011.

s/Tracy A. Jacobs _____
TRACY A. JACOBS