

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTONIO BRIDGES,

Petitioner,

Civil Action No. 06-CV-10566

v.

HON. BERNARD A. FRIEDMAN

MARY BERGHUIS,

Respondent.

**OPINION AND ORDER DENYING MOTION FOR CERTIFICATE OF
APPEALABILITY AND APPLICATION TO PROCEED IN FORMA PAUPERIS**

On August 13, 2009, the court conditionally granted the petition in this matter for a writ of habeas corpus. On August 26, 2009, petitioner filed a notice of appeal, along with an application to proceed on appeal in forma pauperis [docket entries 42, 43]. Subsequently, the United States Court of Appeals for the Sixth Circuit issued an order remanding the case to this court for the sole purpose of determining whether to grant or deny a certificate of appealability.

Petitioner raised four claims in his petition:

1. Ineffective assistance of appellate counsel for failure to file timely application for leave to appeal.
2. Invalid sentencing due to (a) improper judicial fact finding and (b) inaccurate PSI.
3. Involuntary no contest plea because trial judge coerced the plea.
4. Involuntary plea to probation violation for failure of court to inform him of maximum sentence that could be imposed before accepting plea.

The court conditionally granted habeas relief on the first claim and ordered the reinstatement of petitioner's direct appeal before the Michigan courts and appointment of counsel. The remaining three issues were not decided, as the court's opinion and order indicated that they can be raised in the reinstated direct appeal.

It is difficult to understand why petitioner has appealed the court's decision, as it is favorable to him. Regardless of the reason, before petitioner may appeal a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To meet this requirement, a petitioner must show that reasonable jurists could debate whether the petition should have been resolved in a different manner. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). In the present case, the court does not believe that reasonable jurists would find this court's assessment and disposition of any of petitioner's claims debatable or wrong. Because petitioner has failed to make the required showing, no certificate of appealability is warranted. The court will also deny petitioner's application to proceed in forma pauperis because the appeal would be frivolous. *See Dell v. Straub*, 194 F. Supp.2d 629, 659 (E.D. Mich. 2002). Accordingly,

IT IS ORDERED that no certificate of appealability shall issue.

IT IS FURTHER ORDERED that petitioner may not proceed on appeal in forma pauperis.

Dated: September 10, 2009
Detroit, Michigan

S/Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE