Tisdale v. Howes Doc. 34

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

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Civil No. 08-CV-11693 Honorable Arthur J. Tarnow

CAROL R. HOWES,	
Respondent.	

ORDER DENYING PETITIONER'S MOTION FOR CERTRIFICATE OF APPEALABILITY [dkt. # 31] AND GRANTING PETITIONER'S MOTION TO PROCEED IN FORMA PAUPERIS [dkt. #32]

Before the court is Petitioner's motion for a certificate of appealability and motion to proceed in forma pauperis. On April 16, 2009, this court granted Respondent's motion for summary judgment and denied the petition for a writ of habeas corpus as untimely. The Court of Appeals affirmed. *Tisdale v. Howes,* No. 09-1678 (6th Cir. June 29, 2010). Petitioner then filed a motion for relief from judgment, and this court denied it on May 12, 2011. Petitioner seeks permission to appeal this decision to the Court of Appeals.

A habeas petitioner is required to obtain a certificate of appealability before he can appeal the denial of a 60(b) motion for relief from judgment which seeks to challenge the judgment in a habeas case. See United States v. Hardin, 481 F. 3d 924, 926 (6th Cir. 2007). To obtain a certificate of appealability, a prisoner must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2), which the United States Supreme Court has construed to mean that an applicant must show that reasonable jurists could debate that the petition could have been resolved differently or that the claims raised deserved further review." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003).

Reasonable jurists would not conclude that the issues raised in Petitioner's motion

for relief from judgment deserve further review. As explained in the order denying that

motion, Petitioner does not raise any legitimate arguments calling into question the finding

by this court and the court of appeals that his habeas petition was untimely filed. Therefore,

a certificate of appealability is DENIED.

The standard for obtaining IFP status is less burdensome. A court may grant IFP

status if the Court finds that an appeal is being taken in good faith. See 28 U.S.C. §

1915(a)(3); Fed. R.App.24 (a); Foster v. Ludwick, 208 F. Supp. 2d 750, 765 (E.D. Mich.

2002). Although the court finds that Petitioner's substantive arguments have no merit, this

Court does not find that petitioner's appeal was not undertaken in good faith and will grant

his request for leave to appeal in forma pauperis.

Based upon the foregoing, IT IS ORDERED that a certificate of appealability is

DENIED.

IT IS FURTHER ORDERED that the motion for leave to appeal in forma pauperis

is GRANTED.

S/Arthur J. Tarnow

Arthur J. Tarnow

Senior United States District Judge

Dated: July 21, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record

on July 21, 2011, by electronic and/or ordinary mail.

S/Catherine A. Pickles

Judicial Secretary

-2-