

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MIGUEL ANGEL CRUZ-RIVERA, #768420,

Petitioner,

v.

CASE NO. 2:16-CV-13993
HON. DENISE PAGE HOOD

CARMEN PALMER,

Respondent.

_____/

**ORDER DENYING APPLICATION TO PROCEED IN FORMA PAUPERIS
ON APPEAL AND TRANSFERRING REQUEST TO THE SIXTH CIRCUIT**

This matter is before the Court on Petitioner's application to proceed in forma pauperis on appeal [Dkt. #10] regarding the dismissal of his habeas petition as untimely. The Court denied a certificate of appealability and denied leave to proceed in forma pauperis on appeal in its opinion dismissing the petition [Dkt. #7]. Consequently, the Court shall construe Petitioner's current application as a request for reconsideration. *See, e.g., Jackson v. Crosby*, 437 F.3d 1290, 1294 n. 5 (11th Cir. 2006); *Lyons v. Lafler*, No. 2:10-CV-11386, 2013 WL 812083, *1 (E.D. Mich. March 5, 2013). The Court finds no reason to reconsider its prior decision. A motion for reconsideration which presents issues already ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Hence v. Smith*, 49 F. Supp. 2d

547, 550 (E.D. Mich. 1999); *Czajkowski v. Tindall & Assoc., P.C.*, 967 F. Supp. 951, 952 (E.D. Mich. 1997). Such is the case here. Petitioner has not met his burden of showing a palpable defect by which the Court has been misled or his burden of showing that a different disposition must result from a correction thereof as required by Local Rule 7.1(h)(3). Accordingly, the Court denies his application to proceed in forma pauperis on appeal.

When a district court denies a certificate of appealability and denies leave to proceed in forma pauperis on appeal, the proper procedure is for the habeas petitioner to file a motion for a certificate of appealability and/or an application for leave to proceed in forma pauperis on appeal with the appellate court. *See Sims v. United States*, 244 F.3d 509 (6th Cir. 2011) (citing Fed. R. App. P. 22(b)(1)). Accordingly, in the interests of justice, the Court transfers the application to proceed in forma pauperis on appeal to the United States Court of Appeals for the Sixth Circuit.¹

IT IS SO ORDERED.

S/Denise Page Hood
Denise Page Hood
Chief Judge, United States District Court

Dated: August 30, 2017

¹Petitioner filed a notice of appeal at the time he filed the instant application.

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 30, 2017, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager