

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KIMBERLY GRUSNICK, # 433348,

Petitioner,

Case No. 12-CV-11550

v.

HON. MARK A. GOLDSMITH

MILLICENT WARREN,

Respondent.

**ORDER GRANTING PETITIONER'S APPLICATION TO PROCEED IN FORMA
PAUPERIS (Dkt. 17) and DENYING PETITIONER'S APPLICATION FOR A
CERTIFICATE OF APPEALABILITY AS MOOT (Dkt. 14)**

This is a habeas case pursuant to 28 U.S.C. § 2254 and filed by Petitioner Kimberly Grusnick, a state prisoner incarcerated at the Huron Valley Complex in Ypsilanti, Michigan. In an order dated August 13, 2013, the Court adopted the July 22, 2013 Report and Recommendation (R&R) of Magistrate Judge Paul J. Komives, dismissed Petitioner's petition, and declined to issue of a certificate of appealability. 8/13/2013 Order (Dkt. 12). Petitioner then filed a notice of appeal (Dkt. 15) and an application to proceed on appeal in forma pauperis (IFP) (Dkt. 17).¹

Although the Court declined to issue a certificate of appealability, the standard for evaluating an application for leave to proceed IFP is less stringent. A certificate of appealability may only be granted if a petitioner makes a substantial showing of the denial of a constitutional right, but a court can grant IFP status if it finds that an appeal is taken in good faith. Foster v.

¹ Although the Court declined to issue a certificate of appealability in its order adopting the R&R, Petitioner also filed an "application for a certificate of appealability" (Dkt. 14). However, under Federal Rule of Appellate Procedure 22, the filing of a notice of appeal constitutes a request for a certificate of appealability to the court of appeals. Fed. R. App. P. 22(b)(2). Therefore, the Court denies Petitioner's application for a certificate of appealability as moot.

Ludwick, 208 F. Supp. 2d 750, 764-765 (E.D. Mich. 2002); 28 U.S.C. § 1915(a)(3). “Good faith” requires a showing that the issues raised are not frivolous; it does not require a showing of probable success on the merits.” Foster, 208 F. Supp.2d at 765. The sole issue presented by Petitioner – that the prosecutor made an inappropriate comment during his closing argument on Petitioner’s silence at her trial – is not frivolous. Therefore, an appeal could be taken in good faith and Petitioner may proceed IFP on appeal.

Accordingly, the Court grants Petitioner’s IFP application (Dkt. 17).

SO ORDERED.

Dated: December 16, 2013
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on December 16, 2013.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager