

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERNEST EDWARDS,

Petitioner,

v.

CASE NO. 5:07-CV-12874

HONORABLE JOHN CORBETT O'MEARA

GERALD HOFBAUER,

Respondent.

**OPINION AND ORDER (1) DISMISSING PETITION FOR WRIT OF HABEAS
CORPUS, (2) DENYING REQUEST TO PROCEED *IN FORMA PAUPERIS*, AND
(3) DENYING A CERTIFICATE OF APPEALABILITY AND LEAVE TO PROCEED
ON APPEAL *IN FORMA PAUPERIS***

I. Introduction

Petitioner Ernest Edwards, a state prisoner currently incarcerated at the Marquette Branch Prison in Marquette, Michigan, has filed a *pro se* petition for writ of habeas corpus challenging an uttering and publishing conviction which was imposed in the Bay County Circuit Court in 1986.¹ Petitioner has not filed the \$5.00 filing fee applicable to habeas corpus petitions, *see* 28 U.S.C. § 1914(a), but seeks to proceed *in forma pauperis*. Because Petitioner has been enjoined from filing *in forma pauperis* lawsuits in this District without leave of court, and such leave has not been requested nor granted, the Court denies the request to proceed *in forma pauperis* and dismisses the habeas petition. The Court also denies a certificate of appealability and leave to proceed *in forma pauperis* on appeal.

II. Discussion

¹The precise factual and legal nature of Petitioner's claims is unclear because much of the habeas petition is illegible.

Petitioner has been a frequent filer of civil rights complaints and habeas corpus petitions in this District. In 1996, District Judge Lawrence P. Zatkoff reviewed Petitioner's history of filing complaints and petitions in this district. *See Edwards v. Hofbauer*, No. 96-CV-74292-DT (E.D. Mich. Oct. 31, 1996) ("Order Dismissing Complaint Under 28 U.S.C. § 1915(g) and Enjoining Plaintiff from Filing Future Complaints Without Prior Authorization"). Judge Zatkoff found that Petitioner's "history of unsubstantiated and vexatious litigation amounts to continued abuse of his *in forma pauperis* status" and enjoined Petitioner from filing any additional *in forma pauperis* lawsuits in this District without leave of court. Judge Zatkoff ordered that any new complaint or petition filed by Petitioner must be accompanied by:

- (1) an application for permission to file the pleading; and
- (2) an affidavit demonstrating that plaintiff's allegations have merit and that they are not a repetition of plaintiff's previous complaints or petitions.

*Id.*²

Petitioner has failed to file the required application and affidavit in this matter. Therefore, the Court finds that Petitioner is enjoined from filing this petition *in forma pauperis* and his habeas petition should be dismissed. *See, e.g., Edwards v. Jones*, 450 F. Supp. 2d 755, 756-57 (E.D. Mich. 2006) (dismissing prior habeas petition filed by Petitioner).

The Court further notes that the petition is largely illegible. Consequently, the Court cannot discern the factual or legal basis for Petitioner's habeas claims. Federal courts are authorized to dismiss any habeas petition that appears legally insufficient on its face. *See*

²Petitioner has also been enjoined from filing repetitive habeas petitions in the United States District Court for the Western District of Michigan. *See Edwards v. Wisanger*, 2005 WL 2156419, * 2 (W.D. Mich. Sept. 6, 2005) (citing *Edwards v. Watson*, No. 1:02-mc-26 (W.D. Mich. Mar. 13, 2002)).

McFarland v. Scott, 512 U.S. 849, 856 (1994) (citing Rules Governing § 2254 Cases, Rule 4, 28 U.S.C. foll. § 2254); *Edwards*, 450 F. Supp. 2d at 756. The petition is therefore also subject to dismissal for failure to state a claim upon which relief may be granted.

III. Conclusion

For the reasons stated, the Court concludes that Petitioner is enjoined from proceeding *in forma pauperis* in this case, that his petition fails to state a claim for habeas relief, and that his habeas petition must be dismissed.

Before Petitioner may appeal this Court's dispositive decision, 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). Petitioner has not made a substantial showing of the denial of a constitutional right in his habeas petition. No certificate of appealability is warranted in this case nor should Petitioner be granted leave to proceed on appeal *in forma pauperis*. *See* Fed. R. App. P. 24(a).

Accordingly;

IT IS ORDERED that the petition for writ of habeas corpus is **DISMISSED**, that Petitioner's request to proceed *in forma pauperis* is **DENIED**, and that a certificate of appealability and leave to proceed on appeal *in forma pauperis* are **DENIED**.

s/John Corbett O'Meara
United States District Judge

Dated: July 13, 2007

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, July 13, 2007, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager