

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LENNY WALKER,

Petitioner,

Case No. 1:08-cv-4

v.

Honorable Paul L. Maloney

CINDI S. CURTIN,

Respondent.

**ORDER REGARDING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL
AND DENYING CERTIFICATE OF APPEALABILITY**

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. On August 7, 2009, the Court entered an opinion and order, and judgment dismissing the petition. The Court also denied Petitioner a certificate of appealability. The judgment of dismissal followed the Court's *de novo* review of Petitioner's objections to the report and recommendation of the magistrate judge. Petitioner now has filed a notice of appeal, a motion for certificate of appealability (docket #28) and a motion for leave to proceed *in forma pauperis* (docket #30).

Federal Rule of Appellate Procedure 3(e) provides that the appellant must pay all required fees at the time a notice of appeal is filed with the district court. Under Sixth Circuit Internal Operating Procedure 103(1), the docketing fee for a case on appeal is \$450.00. In addition, under 28 U.S.C. § 1917, a \$5.00 filing fee must be paid to the district court. Petitioner has failed to pay the required fees.

Petitioner was permitted to proceed before this Court *in forma pauperis*. Pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure, he may continue that status on appeal

unless this court certifies that his appeal is not taken in good faith. Good faith is judged objectively, and an appeal is taken in good faith when it seeks review of an issue which is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1961). Detailed reasons for dismissal of the petition were provided in the report and recommendation (docket # 20) and the Court's opinion dismissing the petition (docket #25). The Court reaffirms its decision and finds that the issues on which Petitioner might seek review are frivolous. The Court, therefore, certifies that the appeal is not taken in good faith. If Petitioner wishes to proceed with his appeal, he must pay the \$455.00 appellate fee to the Clerk of this Court within thirty days of this order. Alternatively, Petitioner may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirement set forth in FED. R. APP. P. 24(a)(5).

Petitioner also moves for a certificate of appealability. As stated above, the Court denied Petitioner a certificate of appealability when it dismissed his case. For the reasons stated in the Court's opinion and order dismissing the petition, Petitioner's motion for a certificate of appealability will be denied. Accordingly:

IT IS ORDERED that Petitioner's motion for leave to proceed *in forma pauperis* on appeal (docket #30) is DENIED. The Court certifies that the appeal is not taken in good faith. If Petitioner wishes to proceed with his appeal, he must pay the \$455.00 appellate fee to the Clerk of this Court within thirty days of this order. Alternatively, Petitioner may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirement set forth in FED. R. APP. P. 24(a)(5).

IT IS FURTHER ORDERED that Petitioner's motion for certificate of appealability (docket # 28) is DENIED.

Dated: September 30, 2009

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge