

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Larry Dyson,

Petitioner,

v.

Civil No. 10-3598 (JNE/JJK)
ORDER

Wendy Roal,

Respondent.

On August 23, 2010, the magistrate judge ordered that Petitioner's habeas corpus petition be dismissed without prejudice. The magistrate judge also granted Petitioner leave to file a new pleading subject to certain requirements. The magistrate judge stated that he would recommend dismissal of this action if Petitioner failed to satisfy those requirements by September 17, 2010. Petitioner objected. To the extent the magistrate judge's Order dismissed the habeas corpus petition without prejudice, the Court construed the Order as a Report and Recommendation and adopted it. The Court otherwise affirmed the Order. Petitioner filed a motion for reconsideration, but he did not file a new pleading. Judgment was entered on October 19, 2010. Petitioner filed a notice of appeal. He also applied for in forma pauperis status on appeal.

In his motion for reconsideration, Petitioner reiterates his objections to the magistrate judge's Order. The Court denies the motion for reconsideration.

To proceed in forma pauperis on appeal, a litigant must demonstrate an inability to pay, or to give security for, the appellate filing fees. 28 U.S.C. § 1915(a)(1) (2006). Even if the litigant is financially eligible to proceed in forma pauperis on appeal, the litigant may not appeal in forma pauperis if the district court "certifies in writing that [the appeal] is not taken in good faith." *Id.* § 1915(a)(3). To determine whether an appeal is taken in good faith, a court must decide whether the claims to be decided on appeal are factually or legally frivolous. *Coppedge v.*

United States, 369 U.S. 438, 445 (1962). An appeal is frivolous, and therefore cannot be taken in good faith, “where it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

In this case, the information submitted by Petitioner indicates that he is financially eligible to proceed in forma pauperis on appeal. Although the Court remains satisfied that Petitioner’s habeas corpus petition was properly dismissed, the Court declines to certify that Petitioner’s appeal is not taken in good faith. The Court grants his application to proceed in forma pauperis on appeal.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Petitioner’s motion for reconsideration [Docket No. 6] is DENIED.
2. Petitioner’s application to proceed in forma pauperis on appeal [Docket No. 9] is GRANTED.

Dated: October 29, 2010

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge