

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JAMAAL ANDRE MCNEIL,

Petitioner,

vs.

STATE OF NEBRASKA, ATTORNEY  
GENERAL FOR THE STATE OF  
NEBRASKA, DOUGLAS COUNTY  
ATTORNEY, WARDEN OF N.S.P.,  
SCOTT FRANKS, Director of N.S.P.;  
LEE ANN RETELSDORF, District  
Court Judge, Mrs.; and CLERK OF THE  
DISTRICT COURT,

Respondents.

**4:18CV3041**

**MEMORANDUM  
AND ORDER**

This matter is before the court on a Notice of Appeal ([filing no. 36](#)) filed by the Petitioner on September 28, 2018. Petitioner appeals from the court's Memorandum and Order and Judgment dated August 28, 2018 (filing nos. [29](#) and [30](#)), in which the court dismissed his habeas petition without prejudice. Petitioner has also filed a Motion for Leave to Appeal in Forma Pauperis ([filing no. 37](#)), a Motion for a Certificate of Appealability ([filing no. 38](#)), and a Motion for Extension of Time ([filing no. 39](#)).

First, the court finds that Petitioner may proceed on appeal in forma pauperis. As set forth in [Federal Rule of Appellate Procedure 24\(a\)\(3\)](#):

(a) Leave to Proceed in Forma Pauperis . . .

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding . . . .

Because Petitioner proceeded IFP in the district court, he may now proceed on appeal in forma pauperis without further authorization.

Second, the court will deny Petitioner’s request for a certificate of appealability in accordance with its previous determination set forth in the August 28, 2018 Memorandum and Order and Judgment. (*See* Filing Nos. [29](#) and [30](#).)

Lastly, Petitioner requests an extension of time in which to file his notice of appeal based upon the filing of his motion for reconsideration ([filing no. 33](#)), upon which the court has recently ruled. (*See* [Filing No. 42](#).) Rule 4 of the Federal Rules of Appellate Procedure requires a party to file a notice of appeal within 30 days after the challenged judgment is entered. *Fed. R. App. P. 4(a)(1)*. Rule 4(a)(5) allows a party to move the district court to extend the time to file a notice of appeal if “(a) he moves no more than thirty days after the original thirty day deadline has passed, and (b) he shows good cause.” *Pugh v. Minnesota*, 380 *Fed. Appx.* 558, 559 (8th Cir. 2010) (emphasis added).

Here, Petitioner has filed a timely motion to extend the time to file his notice of appeal. Though it appears that Petitioner’s motion is unnecessary, *see* *Fed. R. App. P. 4(a)(4)(B)(i)*, upon consideration, the court will extend the time in which

Petitioner had to file a notice of appeal to include the date on which his notice of appeal was filed in this court. *See* [Fed. R. App. P. 4\(a\)\(5\)\(A\)](#).

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Appeal in Forma Pauperis ([filing no. 37](#)) and Motion for Extension ([filing no. 39](#)) are granted.
2. Petitioner's Motion for a Certificate of Appealability ([filing no. 38](#)) is denied.

Dated this 1st day of October, 2018.

BY THE COURT:

*s/ Richard G. Kopf*  
Senior United States District Judge