

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DANNY R. ROBINSON,

Petitioner,

v.

DIANE SABTKA-RINE, Neb. Stat.
Penitentiary, and SCOTT FRAKES,

Respondents.

8:14CV97

ORDER

This matter is before the court on Danny R. Robinson's Notice of Appeal, [Filing No. 51](#), and the Clerk's Office Memo regarding in forma pauperis status and certificate of appealability, [Filing No. 52](#).

Under the Federal Rules of Appellate Procedure, a party who was permitted to proceed in forma pauperis in the district-court action may proceed on appeal in forma pauperis without further authorization, unless the district court certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis. See [Fed. R. App. P. 24\(a\)\(3\)\(A\)](#); [28 U.S.C. § 1915\(a\)\(3\)](#). There is no indication that the appeal is not taken in good faith and the court finds the petitioner may proceed in forma pauperis on appeal.

A petitioner cannot appeal an adverse ruling on his petition for writ of habeas corpus under § 2254 unless he is granted a certificate of appealability. [28 U.S.C. § 2253\(c\)\(1\)](#); [Fed. R. App. P. 22\(b\)\(1\)](#). Rule 11(a) of the Rules Governing § 2254 Cases requires a district court to "issue or deny a certificate of appealability when it enters a final order adverse to the applicant."

Under 28 U.S.C. § 2253(c)(2), a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” See *Miller-El v. Cockrell*, 537 U.S. 322, 335-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983); see also *Williams v. Taylor*, 529 U.S. 362, 402-13 (2000) (setting out the standards applicable to a § 2254 petition on the merits). In order to obtain a certificate of appealability, a petitioner must show “that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). When dismissal is based on procedural grounds, a petitioner must show, “at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484.

This court found several of the petitioner’s grounds for relief were procedurally barred and the remaining claims lacked merit. The court finds that jurists of reason would not find this court’s conclusions debatable. Accordingly,

IT IS ORDERED THAT:

1. Petitioner is permitted to appeal in forma pauperis.
2. No certificate of appealability will issue.

Dated this 7th day of February, 2017.

BY THE COURT:

s/ Joseph F. Bataillon

Senior United States District Judge