

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,)	
)	
Petitioner,)	8:17CV389
)	
v.)	
)	
STATE OF NEBRASKA,)	ORDER
)	
Respondent.)	
)	

This matter comes on for consideration of the untimely appeal memo prepared by the Deputy Clerk (filing no. 13) regarding the notice of appeal (filing no. 11). It is apparent that the notice of appeal is out of time inasmuch as judgment was entered in this case on November 29, 2017, and the notice of appeal in this case was filed on May 16, 2018. The Petitioner did not pay the \$5.00 filing fee, nor file an application to proceed *informa pauperis* in this court. The Petitioner was ordered to do so in filing no. 3 on October 18, 2017, but did not do so. He has still not done so. The Petitioner has not paid the appellate filing fee either. The Petitioner has failed to show any cause for the late filing of the notice of appeal under Federal Rules of Appellate Procedure 4 or otherwise. Accordingly,

IT IS ORDERED that:

- (1) The Petitioner may not proceed *informa pauperis* on appeal.
- (2) The notice of appeal (filing no. 11) is out of time.
- (3) The Clerk of the United States District Court for the District of Nebraska shall not process the appeal.
- (4) The Clerk of the United States District Court for the District of Nebraska shall provide a copy of this order to the Clerk of the United States Court of Appeals for the Eighth Circuit.¹

DATED this 17th day of May, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge

¹As I have indicated before to the Petitioner (filing no. 10), his petition was dismissed without prejudice and for the second time the Petitioner is advised that he may file a new habeas corpus petition using the standard form that was previously mailed to him by the Clerk of the Court. If he does so, he should either pay the \$5.00 filing fee or file an application to proceed *informa pauperis*.