

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

8:17CV389

MEMORANDUM AND ORDER

This matter is before the court on the Notice of Appeal (filing 28) filed by Petitioner on February 16, 2022, and a memorandum from the Clerk of the Court requesting a ruling as to Petitioner's authorization to proceed in forma pauperis on appeal (filing 29). Petitioner seeks to appeal the court's Order (filing 4) and Judgment (filing 5) entered on November 29, 2017, dismissing Petitioner's habeas petition without prejudice for failing to pay the filing fee or submit a motion to proceed in forma pauperis, and the Judgment (filing 26) and Mandate (filing 27) issued by the Eighth Circuit Court of Appeals on January 28, 2022, denying Petitioner's motion for authorization to file a successive habeas application.

A litigant seeking to appeal a judgment must either pay the required filing fees, *see* Fed. R. App. P. 3(e), or proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). The court hereby certifies that the appeal filed by Petitioner in this case is frivolous and not taken in good faith because (1) Petitioner has already prosecuted an appeal to the Eighth Circuit Court of Appeals in which the Court dismissed the appeal for lack of jurisdiction on July 31, 2018, (filing 24; *see also* filing 25), (2) this matter has been closed for over four years and his appeal is grossly untimely, and (3) the Eighth Circuit Court of Appeals' denial of his motion for authorization to file a successive habeas application is not appealable, *see* 28 U.S.C. § 2244(3)(E). Since

the appeal is not taken in good faith, Petitioner cannot file an appeal in forma pauperis. *See* Fed. R. App. P. 24(a)(3) and 28 U.S.C. § 1915(a)(3).

IT IS THEREFORE ORDERED that: Petitioner may not proceed on appeal in forma pauperis. This matter is closed, and Petitioner should refrain from filing any further frivolous appeals.

Dated this 25th day of February, 2022.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge