

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ERIC FIERRO,

Petitioner,

v.

No. 17-CV-00832-KG-CG

R.C. SMITH, et al.,

Respondents.

**ORDER DENYING LEAVE TO PROCEED ON APPEAL
PURSUANT TO 28 U.S.C. § 1915 AND FED.R. APP. P. 24**

THIS MATTER is before the court on Petitioner Eric Fierro's motion for leave to proceed on appeal without prepayment of fees or costs pursuant to 28 U.S.C. § 1915, filed on May 1, 2018. (Doc. 37). For the reasons explained below, the Court concludes that Petitioner's appeal is not taken in good faith and, therefore, his motion for leave to proceed on appeal without prepayment of fees or costs will be denied.


Title 28 of the United States Code, Section 1915(a)(3) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." § 1915(a)(3). For purposes of § 1915(a)(3), an appeal is taken in good faith if the appellant identifies "the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *DeBardleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991). "The Supreme Court has held that good faith is to be judged by an objective standard, for review of any issue 'not frivolous.'" *Spearman v. Collins*, 500 F. App'x. 742, 743 (10th Cir. 2012) (unpublished) (citing *Coppedge v. United States*, 369 U.S. 438, 445 (1962)). "An appeal is frivolous when the result is obvious, or the appellant's arguments of error are wholly without

merit.” *Id.*; *see also Thompson v. Gibson*, 289 F.3d 1218, 1222 (10th Cir. 2002) (noting that an appeal is frivolous if “it lacks an arguable basis in either law or fact”).

Neither Petitioner’s notice of appeal nor his motion for leave to proceed on appeal without prepayment of fees or costs identifies the issues Petitioner intends to raise on appeal, much less identifies the existence of a reasoned, nonfrivolous argument on the law and facts to support his proposed appellate issues. For this reason, as well as the reasons sets forth in the Court’s April 10, 2018 Memorandum Opinion and Order Adopting Proposed Findings and Recommended Disposition, the Court will deny Petitioner’s motion for leave to proceed on appeal without prepayment of fees or costs and certify that Petitioner’s appeal is not taken in good faith.

Petitioner is advised that he may file a motion for leave to proceed on appeal without prepayment of fees in the United States Court of Appeals for the Tenth Circuit within thirty (30) days after service of this Order. *See Fed. R. App. P. 24(a)(5)*. “The motion must include a copy of the affidavit filed in the district court and the district court’s statement of reasons for its action.” *Id.*

IT IS THEREFORE ORDERED that Petitioner’s motion for leave to proceed on appeal without prepayment of fees or costs (Doc. 37) is DENIED; the Court CERTIFIES that the appeal is not taken in good faith, and the Court DIRECTS the Clerk of Court to notify the Court of Appeals of this denial and certification.


UNITED STATES DISTRICT JUDGE