

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKUSDC SDNY
DOCUMENT
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DOC #: _____
DATE FILED: 11/19/2021

Timothy Johnson,

Petitioner,

—v—

Christopher Miller,

Respondent.

19-cv-516 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

The Court on October 8, 2021, denied Johnson's habeas petition filed under 28 U.S.C. § 2254. Dkt. No. 25. In that Opinion and Order, the Court denied Johnson a certificate of appealability under 28 U.S.C. § 2253. Dkt. No. 25 at 15. The Clerk's judgment issued on October 12, 2021, Dkt. No. 26, and Johnson filed a timely notice of appeal to the U.S. Court of Appeals for the Second Circuit on November 12, 2021, Dkt. Nos. 27, 28; Fed. R. App. P. 4(a)(1)(A). Also on November 12, 2021, Johnson moved this Court for an extension of time to request a certificate of appealability to December 30, 2021. Dkt. No. 27.

Federal Rule of Appellate Procedure 22 explains the procedure for seeking a certificate of appealability. Under Rule 22(b)(1), “[i]f the district judge has denied the certificate,” as happened here, “the applicant may request a circuit judge to issue it.” Rule 22(b)(2) further explains that “[i]f no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals.” Therefore, Johnson's timely notice of appeal satisfies the requirement that he request a certificate of appealability. *See, e.g., United States v. Outen*, 286 F.3d 622, 634 (2d Cir. 2002) (construing a notice of appeal as a request for a

certificate of appealability); *Brown v. United States*, No. 20-1709, 2020 WL 7017848 (2d Cir. Nov. 20, 2020) (same). To the extent that Johnson requests additional time to file materials to the Second Circuit, that request should be directed to the Second Circuit. *See Lebron v. Sanders*, 557 F.3d 76, 78 (2d Cir. 2009) (after a timely notice of appeal was filed, granting petitioner's request to extend the deadline to file a motion to proceed *in forma pauperis*).

This Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, so *in forma pauperis* status is denied. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

The Clerk's office is further asked to mail a copy of this Order to Mr. Johnson and note the mailing on the public docket.

This resolves docket numbers 27 and 28.

SO ORDERED.

Dated: November 18, 2021
New York, New York



ALISON J. NATHAN
United States District Judge