

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:17cv21-FDW**

JEREMY LYNN BENFIELD,)
aka Jeremy Lynn Copper,)
)
 Petitioner,)
)
vs.)
)
FRANK L. PERRY, et al,)
)
 Respondent.)
_____)

ORDER

THIS MATTER is before the Court upon Petitioner Jeremy Lynn Benfield’s Application to Proceed in District Court without Prepaying Fees or Costs (“IFP Application”). (Doc. No. 2.) In conjunction with his Application, Petitioner has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.)

Federal law requires that a petitioner seeking habeas review of his state conviction and/or sentence in federal district court pay a filing fee in the amount of \$5.00 or be granted leave to proceed without prepayment of fees and costs. Rule 3(2) of the Rules Governing Section 2254 Cases in the United States District Courts requires a prisoner’s habeas petition be accompanied by “a motion for leave to proceed in forma pauperis, the affidavit required by 28 U.S.C. § 1915, and a certificate from the warden or other appropriate officer of the place of confinement showing the amount of money or securities that the petitioner has in any account in the institution.” Id.


To proceed in forma pauperis, Petitioner is required to demonstrate that on the date he filed his habeas Petition, he had insufficient funds to pay the \$5.00 filing fee. Under the prison

mailbox rule, a pro-se prisoner's habeas petition is deemed "filed" when he relinquishes control of it to the prison mailroom authorities." United States v. McNeill, 523 F. App'x 979, 983 (4th Cir. 2013) (unpublished). In this case, Petitioner swore under penalty of perjury that he deposited his habeas Petition in the prison mail system on October 23, 2016, and both the Petition and IFP Application were signed on October 23, 2016. (Pet. 19, Doc. No. 1; Appl. 2, Doc. No. 2.) The Clerk of Court's Office, however, received both documents on January 20, 2017 (Appl. 1), and the envelope in which they were mailed bears a January 17, 2017 North Carolina Department of Public Safety date stamp. (Doc. No. 1-2.)

Consequently, Petitioner shall be directed to file evidence that he, in fact, placed his § 2254 Petition and IFP Application in the prison mail system on or about October 23, 2016. Alternatively, Petitioner may file an application to proceed without prepaying fees and costs that reflects his financial situation as it existed on or about January 17, 2017. Failure to comply with the Court's Order may result in denial of Petitioner's current IFP Application without further notice.

IT IS, THEREFORE, ORDERED that within 21 days of entrance of this Order, Petitioner shall file: 1) evidence that he placed his § 2254 Petition and Application to Proceed in District Court without Prepaying Fees or Costs in the prison mail system on or about October 23, 2016; **or** 2) an application to proceed without prepaying fees and costs that reflects his financial situation as it existed on or about January 17, 2017.

Signed: January 27, 2017


Frank D. Whitney
Chief United States District Judge

