

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

Branden Thurman Clark,)
)
Petitioner,)
)
vs.)
)
Leann Bertsch,)
)
Respondent.)
)

**ORDER ADOPTING REPORT AND
RECOMMENDATIONS**

Civil No. 3:10-cv-67

Plaintiff Clark filed a petition for habeas relief under 28 U.S.C. § 2254 (Doc. #2). The Court has received a Report and Recommendation from the Honorable Karen K. Klein, United States Magistrate Judge, recommending that:

- 1) Clark’s petition for habeas relief be dismissed without prejudice;
- 2) The Court certify that an appeal from the dismissal of this action may not be taken *in forma pauperis* because such an appeal is frivolous and cannot be taken in good faith; and
- 3) A certificate of appealability not be issued with respect to any of the issues raised by Clark in this action.

No party has objected to the Report and Recommendation.

The Court has reviewed the Report and Recommendation and agrees with Magistrate Judge Klein’s recommendation. Accordingly, the Court hereby adopts the Report and Recommendation in its entirety.

Based upon the entire record before the Court, dismissal of the motion is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings.

Therefore, a certificate of appealability will not be issued by this court. See Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997) (holding that a district court possesses the authority to issue certificates of appealability under 28 U.S.C. § 2253(c)). If the petitioner desires further review of his petition, he may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals in accordance with Tiedeman v. Benson, 122 F.3d 518, 25-52 (8th Cir. 1997).

Additionally, the Court finds that any appeal would be frivolous, could not be taken in good faith, and may not be taken *in forma pauperis*. See 28 U.S.C. § 1915(a)(3) (“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.”); see also Coppedge v. United States, 360 U.S. 438, 444-45 (1962).

For the foregoing reasons, Anderson’s application requesting habeas relief is **DISMISSED WITHOUT PREJUDICE.**

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 27th day of September, 2010.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief District Judge
United States District Court