

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CARL FANARO,

Petitioner,

v.

Case No. 2:10-cv-1002

JUDGE GREGORY L. FROST

Magistrate Judge Norah McCann King

FRANCISCO PINEDA, WARDEN,

Respondent.

ORDER

Petitioner asked that, should judgment be entered in favor of Respondent, the Court issue a certificate of appealability and grant him leave to appeal *in forma pauperis*. (ECF No. 99, at Page ID # 4921.) Final judgment in favor of respondent has now been entered. (ECF No. 105.)

When a claim has been denied on the merits, a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §2253(c)(2). This standard is a codification of *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983). *Slack v. McDaniel*, 529 U.S.473, 483 (2000). In order to make a substantial showing of the denial of a constitutional right, a petitioner must show

that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were “ ‘adequate to deserve encouragement to proceed further.’ ” *Barefoot*, 463 U.S., at 893, and n.4

529 U.S. at 484.

Reasonable jurists could debate whether this Court properly resolved Petitioner’s claim that he was denied the effective assistance of counsel because his attorney failed to counsel him on the advisability of proceeding to trial and of the potential sentencing ramifications of doing so. As to that claim, the Court **ISSUES A CERTIFICATE OF APPEALABILITY.**

Petitioner also asks that he be permitted to proceed on appeal without prepayment of fees or costs. However, this action was instituted with the assistance of counsel upon the payment of the filing fee; Petitioner has not submitted a financial affidavit demonstrating that he is unable to pay the fees and costs of an appeal. Petitioner's request that he be permitted to proceed on appeal *in forma pauperis* is therefore **DENIED**. This denial is without prejudice, however, to renewal upon compliance with the requirements of Federal Rule of Appellate Procedure 24(a)(1).

IT IS SO ORDERED.

_____/s/ Gregory L. Frost_____
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE