

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

STEPHEN WHITT,

Petitioner,

v.

**WARDEN, LEBANON
CORRECTIONAL INSTITUTION,**

Respondent.

CASE NO. 2:12-CV-731

JUDGE JAMES L. GRAHAM

Magistrate Judge Elizabeth A. Preston Deavers

OPINION AND ORDER

On August 7, 2014, final judgment was entered dismissing the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter now is before the Court on Petitioner's August 15, 2014, *Notice of Appeal*, which this Court construes as a request for a certificate of appealability, and his request to proceed *in forma pauperis* on appeal. (ECF Nos. 61, 63.) For the reasons that follow, Petitioner's request for a certificate of appealability and his request to proceed *in forma pauperis* on appeal (ECF Nos. 61, 63) are **DENIED**.

Petitioner's *Motion to Review Supplemental Brief* and his request for transcripts (ECF Nos. 60, 64) are also **DENIED**.

Petitioner asserts that the trial court lacked jurisdiction, his convictions are against the manifest weight of the evidence and not supported by constitutionally sufficient evidence, he was convicted in violation of the Fourth Amendment, denied effective assistance of counsel and the right to a jury trial, and was improperly sentenced. The Court dismissed all of these claims as procedurally defaulted or without merit.

Where a claim has been denied on the merits, a certificate of appealability may issue where the petitioner establishes that "reasonable jurists could debate whether. . . the petition

should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000)(citing 28 U.S.C. § 2253(c); *Barefoot v. Estelle*, 463 U.S. 880, 894 (1983)).

Where a claim has been dismissed on procedural grounds, a certificate of appealability shall issue where jurists of reason would find it debatable whether the Court was correct in its procedural ruling that petitioner waived his claims of error, and whether petitioner has stated a viable constitutional claim. *Slack v. McDaniel*, 529 U.S. at 484–85. Both of these showings must be made before a court of appeals will entertain the appeal. *Id.*

This Court is not persuaded that Petitioner has met either of these standards here. Petitioner's request for a certificate of appealability, therefore is **DENIED**.

Petitioner's motion to proceed *in forma pauperis* on appeal also is **DENIED**. Pursuant to 28 U.S.C. § 1915(a) (3), an appeal may not be taken *in forma pauperis* if the appeal is not taken in good faith. Federal Rule of Appellate Procedure 24(a)(3)(A) also provides:

A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

- (A) the district court-before or after the notice of appeal is filed-certifies that the appeal is not taken in good faith[.]

Id. In addressing this standard, another court has explained:

The good faith standard is an objective one. *Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917, 8 L.Ed.2d 21 (1962). An appeal is not taken in good faith if the issue presented is frivolous. *Id.* Accordingly, it would be inconsistent for a district court to determine that a complaint is too frivolous to be served, yet has sufficient merit to support an appeal *in forma pauperis*. See *Williams v. Kullman*, 722 F.2d 1048, 1050 n. 1 (2d Cir. 1983).

Frazier v. Hesson, 40 F.Supp.2d 957, 967 (W.D. Tenn. 1999). However,

“the standard governing the issuance of a certificate of appealability is more demanding than the standard for determining whether an appeal is in good faith.” *U.S. v. Cahill–Masching*, 2002 WL 15701, * 3 (N.D. Ill. Jan.4, 2002). “[T]o determine that an appeal is in good faith, a court need only find that a reasonable person could suppose that the appeal has some merit.” *Walker v. O’Brien*, 216 F.3d 626, 631 (7th Cir. 2000).

Penny v. Booker, No. 05–70147, 2006 WL 2008523, at *1 (E.D. Mich., July 17, 2006).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that the appeal is not taken in good faith. Petitioner's request for a certificate of appealability, and request to proceed *in forma pauperis* on appeal (ECF Nos. 61, 63) are **DENIED**.

Petitioner's *Motion to Review Supplemental Brief* and his request for transcripts (ECF Nos. 60, 64) are **DENIED**.

IT IS SO ORDERED.

Date: September 9, 2014

s/James L. Graham
JAMES L. GRAHAM
United States District Judge