

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

WILLIAM H. EVANS, JR.,

Petitioner,

v.

U.S. MARSHAL SERVICE,

Respondent.

CASE NO. 2:17-CV-424

JUDGE JAMES L. GRAHAM

Magistrate Judge Chelsey M. Vascura

OPINION AND ORDER

On October 19, 2017, the Court issued an *Order* transferring this action to the United States Court of Appeals for the Sixth Circuit as a second or successive petition. (ECF No. 36.) Petitioner has filed a *Notice of Appeal* (ECF No. 38), as well as a motion for leave to appeal *in forma pauperis* and a motion for a certificate of appealability. For the reasons that follow, the motions are **DENIED**.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal would not be taken in good faith. Therefore, Petitioner is **DENIED** leave to appeal *in forma pauperis*. See Fed.R.App.P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

“In contrast to an ordinary civil litigant, a state prisoner who seeks a writ of habeas corpus in federal court holds no automatic right to appeal from an adverse decision by a district court.” *Jordan v. Fisher*, —U.S. ——. —, 135 S.Ct. 2647, 2650 (2015); 28 U.S.C. § 2253(c)(1) (requiring a habeas petitioner to obtain a certificate of appealability in order to appeal.) When a claim has been denied on the merits, a certificate of appealability may issue only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). 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.’ ” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, n. 4 (1983)). When a claim has been denied on procedural grounds, a certificate of appealability may issue if the petitioner establishes that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Id.*

This Court is not persuaded that reasonable jurists would debate whether the Court appropriately transferred this action to the Sixth Circuit as successive. Therefore, the motion for a certificate of appealability is **DENIED**.

With respect to any application by Petitioner to proceed on appeal *in forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal would not be taken in good faith. Therefore, the motion for leave to appeal *in forma pauperis* is **DENIED**. *See* Fed.R.App.P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

Date: November 17, 2017

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