

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>ROBERT L. ERICKSON, Movant, vs. UNITED STATES OF AMERICA, Respondent.</p>	<p>3:16-CV-03015-KES ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL AND ISSUING CERTIFICATE OF APPEALABILITY</p>
------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------

Movant, Robert L. Erickson, filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Docket 1. The court appointed the Federal Public Defenders Office to represent Erickson regarding his claim. Docket 6. Counsel later moved to dismiss Erickson's *Johnson* claims, Docket 16, and the court entered judgment against Erickson. Docket 17. Erickson filed a notice of appeal, Docket 19, and now moves for leave to proceed in forma pauperis on appeal. Docket 20.

Under Federal Rules of Appellate Procedure 24, an appellant who has not received prior approval from the district court to proceed in forma pauperis must file an affidavit that "(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal." Erickson's application demonstrates his inability to pay or to give security for fees and costs. The court finds that Erickson is entitled to proceed in forma pauperis on appeal.

The Eighth Circuit Court of Appeals remanded this matter to this court to rule on the issue of whether a certificate of appealability should be issued and if granted to specify the issue or issues to be considered on appeal. Docket 23. A certificate may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(2). A “substantial showing” is one that demonstrates “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The court finds that Erickson has made a substantial showing that the court’s dismissal of his non-*Johnson* claims was debatable or wrong. Consequently, the court issues a certificate of appealability on this issue.

Thus, it is ORDERED

1. Erickson’s Motion for leave to proceed in forma pauperis on appeal (Docket 20) is granted
2. A certificate of appealability is issued as to the issue of whether the court erred in dismissing Erickson’s non-*Johnson* claims based on the motion to dismiss.

Dated July 5, 2017.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE