

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

PATRICK DAVID MCCOLLUM,

Petitioner,

v.

Case No. 1:15-cv-01057-JDB-egb

CHERRY LINDAMOOD,

Respondent.

ORDER DISMISSING PETITION,
DENYING CERTIFICATE OF APPEALABILITY,
AND
DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*

On April 29, 2016, Respondent, Cherry Lindamood, filed a motion to dismiss Petitioner's § 2254 petition. (ECF No. 14.) Petitioner, Patrick David McCollum, did not file a brief in opposition to the motion. On December 2, 2016, the Court ordered Petitioner to show cause within twenty-one (21) days why the motion to dismiss should not be granted. (ECF No. 15.) Although warned that failure to comply with the order would result in dismissal of the case under Federal Rule of Civil Procedure 41(b), McCollum did not respond to the Court's order and the time has passed for doing so.

Accordingly, the petition is DISMISSED for Petitioner's failure to comply with the Court's order and for want of prosecution. Judgment shall be entered for Respondent.

APPEAL ISSUES

A § 2254 petitioner may not proceed on appeal unless a district or circuit judge issues a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1); FED. R. APP. P. 22(b)(1). A COA 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) & (3). Although a COA does not require a showing that the appeal will succeed, *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003), a court should not issue a COA as a matter of course. *Bradley v. Birkett*, 156 F. App'x 771, 773 (6th Cir. 2005).

In this case, there is no question that the petition should be dismissed for the reasons stated. Because any appeal by Petitioner does not deserve attention, the Court DENIES a certificate of appealability.

Pursuant to Federal Rule of Appellate Procedure 24(a), a party seeking pauper status on appeal must first file a motion in the district court, along with a supporting affidavit. FED. R. APP. P. 24(a). However, Rule 24(a) also provides that if the district court certifies that an appeal would not be taken in good faith, the prisoner must file his motion to proceed *in forma pauperis* in the appellate court. *Id.*

In this case, for the same reasons the Court denies a COA, the Court CERTIFIES, pursuant to Rule 24(a), that any appeal in this matter would not be taken in good faith. Leave to appeal *in forma pauperis* is therefore DENIED.

IT IS SO ORDERED, this 25th day of January, 2017.

s/ J. DANIEL BREEN

J. DANIEL BREEN

CHIEF UNITED STATES DISTRICT JUDGE