

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

JOSHUA LYNN ELLIS,)

Petitioner,)

v.)

Case No. 1:17-cv-01107-STA-egb

STATE OF TENNESSEE,)

Respondent.)

ORDER DISMISSING § 2254 PETITION WITHOUT PREJUDICE,
DENYING CERTIFICATE OF APPEALABILITY,
AND
DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*

On June 6, 2017, Petitioner Joshua Lynn Ellis filed a *pro se* pleading on a form used by the Tennessee state courts for post-conviction relief (“Petition”). (ECF No. 1) The pleading was docketed as a petition under 28 U.S.C. § 2254. The Court ordered Petitioner to file an amended petition on the Court’s official form and warned that failure to do so would result in dismissal of the Petition. (ECF No. 7)

Petitioner has not filed an amended petition, and the time for doing so has passed. Accordingly, the Petition is **DISMISSED** without prejudice for Ellis’s failure to comply with the Court’s order and for want of prosecution. *See* Fed. R. Civ. P. 41(b).

The Clerk is **DIRECTED** to close the case.

APPEAL ISSUES

A section 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), (c)(3). A “substantial showing” is made when the petitioner demonstrates 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.’” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack v. Daniel*, 529 U.S. 473, 484 (2000)).

In this case, reasonable jurists would not debate the correctness of the Court’s decision to dismiss the Petition. Because any appeal by Ellis 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). But 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 it 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.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: August 24, 2017