

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

MARY KATHRYN WEAVER, 1315776           §  
VS.   §   CIVIL ACTION NO. 2:09cv128  
DIRECTOR, TDCJ-CID                       §

MEMORANDUM OPINION AND ORDER  
DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

Came on for consideration, the Petitioner's motion to proceed *in forma pauperis* on appeal (docket entry #58).

On July 13, 2012, the assigned Magistrate Judge filed a Report and Recommendation (R&R) that Petitioner's petition be dismissed with prejudice (docket entry #52). The Petitioner then filed objections (docket entry #54) to the Magistrate Judge's R&R. Her objections largely restated her original arguments, or made generally conclusory additional statements.


On a *de novo* review, the Court overruled Petitioner's objections, adopted the R&R, denied all relief and dismissed Petitioner's habeas petition with final judgment entered on August 28, 2012. The Court denied a certificate of appealability ("COA") at the same time.

For the reasons stated in the Report and Recommendation and the Order of Dismissal adopting the Report and Recommendation and dismissing Petitioner's habeas petition, Petitioner does not have a "good faith" non-frivolous issue for appeal as required for leave to proceed *in forma pauperis*. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A); *Baugh v. Taylor*, 117 F.3d 197, 202 n.21 (5th Cir. 1997) (To comply with Rule 24 and to inform the Court of Appeals of the reasons for its certification, a district court may incorporate by reference its order dismissing an appellant's claims (in the context of a civil rights action pursuant to 42 U.S.C. § 1983)). Furthermore, because the Petitioner has not shown that she is entitled to a certificate of appealability, she also has not shown that she is entitled to proceed *in forma pauperis* on appeal. *United States v. Delario*, 120 F.3d

580, 582-83 (5th Cir. 1997). In addition, Petitioner did not proceed *in forma pauperis* in the District Court; in fact, she paid a \$350.00 filing fee in error and was returned the excess \$345.00 over the \$5.00 habeas corpus filing fee. Therefore, Petitioner is denied leave to proceed *in forma pauperis* on appeal. It is accordingly

**ORDERED** that the motion to proceed *in forma pauperis* on appeal (docket entry #58) is **DENIED**. All future motions should be filed with the Clerk of the United States Court of Appeals for the Fifth Circuit.

**So ORDERED and SIGNED this 5th day of October, 2012.**

  
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RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE