

United States District Court
Southern District of Texas

ENTERED

May 25, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

MARCOS LOPEZ ORTIZ,
TDCJ #01049113,

Petitioner,

VS.

LORIE DAVIS,

Respondent.

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CIVIL ACTION NO. 3:18-CV-0127

**ORDER DENYING MOTION
TO PROCEED ON APPEAL IN FORMA PAUPERIS**

On May 16, 2018, this Court dismissed the federal habeas corpus petition filed by state inmate Marcos Lopez Ortiz for lack of jurisdiction under 28 U.S.C. § 2244(b) after finding no indication in the record that the United States Court of Appeals for the Fifth Circuit had authorized a successive application. Ortiz has filed a notice of appeal (Dkt. 6) and a motion to proceed on appeal *in forma pauperis* (Dkt. 7). The motion is denied for reasons explained briefly below.

Ortiz conceded in his petition that he challenges a conviction that was attacked previously in another federal habeas corpus proceeding and that he had not received permission from the Fifth Circuit to file an additional petition. As explained in the dismissal order, this Court lacks jurisdiction over a successive collateral attack in the absence of express authorization from the Fifth Circuit. To the extent that Ortiz seeks leave to proceed as a pauper on appeal following this Court’s dismissal for lack of


jurisdiction, the Court certifies that the appeal is not taken in good faith for purposes of Rule 24(a)(3) of the Federal Rules of Appellate Procedure.

Therefore, it is **ORDERED** that the motion for leave to proceed *in forma pauperis* (Dkt. 7) is **DENIED**.

Although this Court has certified that the appeal is not taken in good faith under Rule 24(a)(3) of the Federal Rules of Appellate Procedure, the applicant may challenge this finding pursuant to *Baugh v. Taylor*, 117 F.3d 197 (5th Cir. 1997), by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Fifth Circuit, within thirty (30) days of the date of this order. *See United States v. Williams*, 115 F. App'x 207 (5th Cir. 2004) (reviewing the dismissal of a successive collateral attack and the district court's certification that the appeal was not taken in good faith under *Baugh*).

The Clerk will provide a copy of this order to the petitioner.

SIGNED at Galveston, Texas, this 25th day of May, 2018.



George C. Hanks Jr.
United States District Judge