

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

RICKY COTTON,

Petitioner,

v.

RICK THALER, Director,
Texas Department of Criminal Justice,
Correctional Institutional Division,

Respondent.

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Civil Action No. SA-10-CV-87-XR

ORDER

On this day, the Court considered Petitioner’s “Appeal and Reconsideration Application To Proceed In Forma Pauperis” (Docket Entry No. 17). The Court construes Petitioner’s document as a motion to reconsider its previous order denying Petitioner’s motion to reconsider the Magistrate Judge’s denial of an application to proceed *in forma pauperis*. The motion is DENIED.

Statement of the Case

Petitioner Ricky Cotton filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Cotton was convicted in the 186th District Court of Bexar County, Texas, of murder and sentenced to twenty-five years in prison.

Procedural History

Petitioner filed a motion to proceed *in forma pauperis* when he submitted his petition for a writ of habeas corpus.¹ The motion was automatically referred to Magistrate Judge John W. Primomo pursuant to Appendix C of the Local Rules for the Western District of Texas and 28 U.S.C.

¹Application to Proceed In Forma Pauperis, Feb. 1, 2010 (Docket Entry No. 1).

§ 636(b)(1). The Magistrate Judge denied petitioner's application to proceed *in forma pauperis*, noting that Cotton had a current balance of \$268.69 in his account and receives an average deposit of \$29.17 per month, which is sufficient to pay the \$5.00 filing fee.² Cotton filed a "Notice of Appeal on Denial of In Forma Pauperis" in which he asks the District Court to reconsider the Magistrate Judge's order denying his application to proceed *in forma pauperis*.³

The Court denied Petitioner's motion, finding that the Magistrate Judge's order was neither clearly erroneous nor contrary to law.⁴ Petitioner now moves the Court to reconsider its order denying his motion to reconsider.⁵

Analysis

Cotton's motion is denied for the reasons stated in the Court's order of May 25, 2010.

Cotton's current motion contains information unrelated to whether he qualifies to proceed *in forma pauperis*. An application to proceed in forma pauperis states that because of an applicant's poverty, he or she is unable to advance the filing fee. The Magistrate Judge's order states that Cotton has enough money to pay the \$5 filing fee, and orders Cotton to pay the \$5 filing fee. It does nothing more. Cotton's arguments regarding procedural default, oral arguments, equal protection, and due process are unrelated to the motion to proceed *in forma pauperis*.

²Order, Feb. 22, 2010 (Docket Entry No. 5).

³"Notice of Appeal on Denial of In Forma Pauperis," Mar. 18, 2010 (Docket Entry No. 7).

⁴Order, May 25, 2010 (Docket Entry No. 15).


⁵"Appeal & Reconsideration Application to Proceed In Forma Pauperis," Jun. 4, 2010 (Docket Entry No. 17).

Conclusion

Petitioner's motion for the District Court to reconsider its previous order is DENIED.

It is so ORDERED.

SIGNED this 17th day of June, 2010.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE