

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

<p>LUVEN WHITEHORSE, Petitioner,</p> <p>vs.</p> <p>UNITED STATES OF AMERICA, Respondent.</p>	<p>MEMORANDUM DECISION AND ORDER DENYING PETITIONER'S MOTION FOR CERTIFICATE OF APPEALABILITY AND GRANTING PETITIONER'S MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS</p> <p>Case No. 2:09-CV-273 TS</p>
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This matter is before the Court on Petitioner's Motion for Certificate of Appealability and Petitioner's Motion for Leave to Appeal *in forma pauperis*.

An appeal from a final order in a proceeding under 28 U.S.C. § 2255 may not be taken unless a judge or circuit justice issues a certificate of appealability.<sup>1</sup> A COA may issue only "if the applicant has made a substantial showing of the denial of a constitutional right."<sup>2</sup> "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the

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<sup>1</sup>28 U.S.C. § 2253(c)(1).

<sup>2</sup>*Id.* § 2253(c)(2).

district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further."<sup>3</sup> For substantially the same reasons set out in the Court's prior Orders,<sup>4</sup> the Court will deny Petitioner's Motion for Certificate of Appealability. However, the Court will allow Petitioner to proceed *in forma pauperis*.

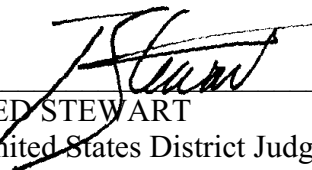
It is therefore

ORDERED that Petitioner's Motion for Certificate of Appealability (Docket No. 10) is DENIED. It is further

ORDERED that Petitioner's Motion for Leave to Appeal *in forma pauperis* is GRANTED.

DATED August 28, 2009.

BY THE COURT:

  
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TED STEWART  
United States District Judge

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<sup>3</sup>*Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

<sup>4</sup>Docket Nos. 3 and 5.