



Smith v. Rabion, et al

2014 | Cited 0 times | M.D. Florida | June 10, 2014

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

MAXIE SMITH,

Petitioner, -vs- Case No. 8:02-CV-1988-T-30EAJ JERRY RABION, et al.,

Respondents. _____/

O R D E R This matter is before the Court for consideration of Petitioner 's Motion Enlargement of Time (Dkt. 49) in which it appears that Petitioner requests an extension of time to file a motion for leave to proceed on appeal in forma pauperis. Petitioner is appealing this Court's April 10, 2014 Order denying his motion for appointment of counsel (see Dkt. 45).

Statutory provision for litigation in forma pauperis in the federal courts is made by 28 U.S.C. § 1915, authorizing any court of the United States to allow indigent persons to prosecute, defend or appeal suits without prepayment of costs. See *Coppedge v. United States*, 369 U.S. 438, 441 (1962). The following statutory language guides district courts in passing upon an application for in forma pauperis status: "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "'Good faith' has been defined as a requirement that an appeal present a nonfrivolous question for review." *Cruz v. Hauck*, 404 U.S. 59, 62 (1971). "An issue is frivolous when it appears that 'the legal theories are indisputably meritless.'" *Ghee v. Retailers Nat'l Bank*, 271 Fed. Appx. 858, 860 (11th Cir. 2008) (citing *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993)). "In other words, an IFP action is frivolous, and thus not brought in good faith, if it is 'without arguable merit either in law or fact.'" *Ghee*, 271 Fed. Appx. at 859 (citing *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001)).

This appeal is not taken in good faith under 28 U.S.C. 1915(a)(3) and Rule 24(a) of the Federal Rules of Appellate Procedure because Plaintiff cannot demonstrate "the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *McIntosh v. United States Parole Comm'n*, 115 F.3d 809, 812 (10th Cir. 1997) (quoting *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991)). Because the appeal is not taken in good faith, Plaintiff is not entitled to appeal as a pauper. Because Plaintiff is not entitled to appeal as a pauper, his request for an extension of time to file a motion to proceed on appeal in forma pauperis will be denied.



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ACCORDINGLY, the Court ORDERS that Petitioner 's Motion Enlargement of Time (Dkt. 49) is DENIED.

DONE and ORDERED in Tampa, Florida on June 10, 2014.

SA:sfc Copy to: Pro se Petitioner

