

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOSIAH L. WASHINGTON,

Petitioner,

ORDER

v.

03-C-0327-C

DANIEL J. BENIK, Warden, Stanley
Correctional Institution,

Respondent.

This court has received a letter dated July 2, 2003, from petitioner Josiah L. Washington in which he asks various questions about this court's order dismissing his § 2254 habeas petition and what he must do in order to obtain a certificate of appealability. I will construe the letter as a petition for leave to proceed in forma pauperis on appeal and a request for a certificate of appealability pursuant to 28 U.S.C. § 2253.

Because petitioner seeks leave to proceed in forma pauperis on appeal, this court must determine whether petitioner is taking his appeal in good faith. See 28 U.S.C. § 1915(a)(3). Then, pursuant to 28 U.S.C. § 2253(c)(1)(A) and Fed. R. App. P. 22, this court must determine whether to issue a certificate of appealability to petitioner. To find that an appeal is in good faith, a court need only find that a reasonable person could suppose the appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). However, a certificate of appealability shall issue "only if the applicant has made a substantial showing of the denial of

a constitutional right.” Id.; see also 28 U.S.C. § 2253(c)(2). In order to make this showing, a petitioner must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893, n.4 (1983)).

Petitioner cannot make either of these showings. This court denied petitioner’s claims summarily on their merits pursuant to Rule 4 of the Rules Governing Section 2254 Cases. As this court explained in its June 19, 2003 order, the petition and its attachments showed that petitioner’s constitutional rights were not violated when the state convicted him on August 11, 1997 for two counts of second degree sexual assault of a child. This is not a debatable conclusion. The petition and its attachments fail to support petitioner’s conclusory assertion that he did not understand the consequences of his plea or that he would have gone to trial and defended against the charges by presenting medical records from the sexual assault exam of the victim. Because there is no factual or legal support for any of petitioner’s claims, petitioner cannot make a substantial showing of the denial of a constitutional right or that his appeal is taken in good faith. Accordingly, his requests for leave to proceed in forma pauperis on appeal and a certificate of appealability are denied.

To the extent that petitioner has questions about the meaning of this or other orders of this court, he must look elsewhere for answers. Petitioner's questions amount to a request for legal advice that this court is not permitted to give.

ORDER

IT IS ORDERED that petitioner's requests for leave to proceed in forma pauperis on appeal and a certificate of appealability are DENIED.

Dated this 16th day of July, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge