

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

FELICIANO T. DOUGLAS,

Petitioner,

v.

PHIL KINGSTON, Warden,
Waupun Correctional Institution,

Respondent.

ORDER

05-C-373-C

On December 5, 2005, this court denied petitioner's request for a writ of habeas corpus under 28 U.S.C. § 2254. Now petitioner seeks to appeal his claim that he was convicted by an biased jury as a result of extraneous evidence introduced during jury deliberations. Before the court is petitioner's request for a certificate of appealability permitting him to challenge the denial of his petition under 28 U.S.C. § § 2253(c).

A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253; Miller-El v. Cockrell, 537 U.S. 322 (2003). Therefore, before an appeal may be entertained, a prisoner who was denied habeas relief in the district court must first obtain a certificate of appealability. Id.; Williams v. United States, 150 F.3d 639, 641 (7th Cir. 1998). A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional

right.” 28 U.S.C. § 2253(c)(2); Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). To meet this burden, a petitioner must demonstrate that “reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” Miller-El, 537 at 322.

Petitioner has satisfied this standard. Although ultimately I concluded that petitioner was unable to show that the state courts had adjudicated the facts of his case “unreasonably” within the meaning of 28 U.S.C. § 2254(e), I noted that following trial, troubling allegations were made by two of petitioner’s jurors suggesting that a third juror had provided the jury with prejudicial extraneous information about petitioner. Although 28 U.S.C. § 2254(d) allows little room for scrutiny of state court decisions, reasonable jurists considering petitioner’s argument might conclude that the matter should be decided in petitioner’s favor. Accordingly, petitioner’s motion for a certificate of appealability will be granted.

One matter remains unresolved. Before petitioner’s appeal may proceed, he must either pay the \$255 fee for filing his appeal or request leave to proceed in forma pauperis on appeal. If he wishes to proceed in forma pauperis, he must submit a copy of his prison trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal, so that the court can confirm that he is eligible for pauper status. Longbehn v. United States, 169 F.3d 1082 (7th Cir. 1999).

In determining whether a habeas corpus petitioner is eligible for pauper status, this court applies the formula set out in 28 U.S.C. § 1915(b)(1). Specifically, from the

petitioner's trust fund account statement for the six- month period immediately preceding the filing of his appeal, I add the deposits made to petitioner's account and calculate 20% of the greater of the average monthly deposits or the average monthly balance in the account. If the 20% figure is more than the fee petitioner owes for filing his appeal, he may not proceed in forma pauperis. If the 20% figure is less than \$255, he must pay whatever portion of the fee the calculation yields. He will be excused from prepaying the remainder of the fee. If petitioner does not have sufficient funds in his regular account to pay the calculated amount, he may request an enlargement of time to make the payment. Petitioner may have until April 30, 2006, to submit his trust fund statement or pay the filing fee in full.

ORDER

IT IS ORDERED that

1. Petitioner's request for a certificate of appealability is GRANTED; and
2. Petitioner may have until April 30, 2006, to pay the fee for filing his appeal or submit a request to proceed in forma pauperis on appeal, along with a copy of his trust fund statements from October 2005 to April 2006.

Entered this 7th day of April, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge